SUPREME COURT, U. S.

SEP 10 1975

MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1974

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Petitioner,

-vs-

JONATHAN W. DIXON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

GEORGE D. GABEL, JR.
Wahl and Gabel
405 Florida Title Building
Jacksonville, Florida 32202

Counsel for Petitioner

JAMES E. WILLIAMS
500 Water Street
Jacksonville, Florida 32202

Of Counsel

September, 1975

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	4
CONSTITUTIONAL PROVISION INVOLVED	4
STATEMENT OF THE CASE	4
REASONS FOR GRANTING WRIT	9
Applicability of the Doctrine of Forum Non Conveniens in an FELA Case	10
Florida Recognizes the Doctrine	10
Denial of Equal Protection of the Laws to Seaboard Coast Line Railroad Company	15
1. SCL as a Nonresident	15
2. SCL as a Resident	26
The Motion to Dismiss Would Probably Have Been Granted	26
CONCLUSION	27
CERTIFICATE OF SERVICE	29

TABLE OF AUTHORITIES

Cases

Page

Adam v. Saenger, 303 U.S. 59 (1938) 3, 6

Adams v. Seaboard Coast Line Railroad Co., Fla. 1st D.C.A., 1969) 224 So.2d 797 ..... 8, 16, 17, 18, 22, 23, 24

American Railway Express Co. v. Levee, 263 U.S. 19 (1923) 3

Atlantic Coast Line Railroad Co. v. Cameron, 190 So.2d 34 (Fla. 1st D.C.A., 1966) 22

Autry v. Seaboard Coast Line Railroad Co., 32 Fla. Supp. 53 (1968) 12

Baker v. Atlantic Coast Line Railroad Co., 21 Fla.Supp. 21 (1963) 11

Banachowski v. Atlantic Refining Co., 84 F.Supp. 444 (S.D., N.Y., 1949) 27

Barbier v. Connolly, 113 U.S. 27 (1885) 21

Beckley v. Hanks, 389 U.S. 81 (1967) 3

Brown v. Blidberg Rothchild Co., 222 F. Supp. 18 (D.Del., 1963) 27

TABLE OF AUTHORITIES (Cont'd)

Page

Callender v. United States, 380 U.S. 519, 383 U.S. 270 (1965) 3

Connolly v. Union Sewer Pipe Co., 184 U.S. 540 (1902) .. 21

Cuyahogarp Co. v. Northern Realty Co., 240 U.S. 300 (1917) 3

Distelhorst v. Day & Zimmerman, 58 F.Supp. 334 (S.D. Iowa, 1944) 21

Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667, (Fla., 1927) 18, 23

Gonzales v. Atchison T. & S. F. R. Co., 371 P.2d 193 (Kan., 1962) 14, 23

Gore v. United States Steel Corp., 104 A.2d 670 (N.J., 1954) 14, 23

Gulf, Colorado & Sante Fe Railway Co. v. Ellis, 165 U.S. 150 (1897) 21

Gulf Oil Corp. v. Gilbert, 330 U.S. 501, (1947) 14

Hagen v. Viney, 124 Fla. 747, 169 So. 391 13

Hayes v. Missouri, 120 U.S. 68 (1887) 21

Hubbard v. Southern Ry. Co., 14 Fla.Supp. 10 (1959) 11

Joseph S. Finch & Co. v. McKittrick, 23 F.Supp. 244 (W.D. Mo., 1938) 22

Koster v. American Lumberman Mutual Cas. Co., 330 U.S. 518 (1947) 14

TABLE OF AUTHORITIES (Cont'd)

Page

Little v. Smith, 124 Kan. 237, 257 P. 959, 57 A.L.R. 100 (1927) 24

Missouri K&T R. Co. v. Elliot, 184 U.S. 530 (1902) 3

Missouri ex rel Southern R. Co. v. Mayfield, 340 U.S. 1 (1950) 10

Nichol v. J. C. Penney Co., 97 F.Supp. 83 (E.D., Mich., 1951) 27

Popkin v. Eastern Airlines, Inc., 253 F.Supp. 244 (E.D., Pa., 1966) 26

Power Manufacturing Co. v. Saunders, 274 U.S. 490 (1927) 25

Randall v. Board of Commissioners, 261 U.S. 252 (1923) 3

Shaw v. Seaboard Coast Line Railroad Co., (Fla., 1st D.C.A., 1970) 229 So.2d 275 16

Southern Railway Co. v. Bowling, 129 So.2d 433 (Fla., 3d D.C.A., 1961) 25

Southern Railway Co. v. Greene, 216 U.S. 400 (1910) 20

Southern Railway Co. v. McCubbins, 196 So.2d 512 (Fla., 3d D.C.A., 1967) 2, 10, 15, 21, 24, 25

Stern and Gressman, Supreme Court Practice, p. 113, 4th Edition; p. 88, 3rd Edition; and p. 79, 2nd Edition 3

Sullivan v. Texas, 207 U.S. 416 (1908) 3

TABLE OF AUTHORITIES (Cont'd)

Page

Thompson Products v. Pennsylvania Railroad Co., 127 F.Supp. 449 (S.D., N.Y., 1955) 27

Truax v. Corrigan, 257 U.S. 312 (1921) 20

Truax v. Raich, 239 U.S. 33 (1915) 21

Statutes and Constitutions

28 U.S.C. 1257(3) 3

28 U.S.C. 1332(c) 19

28 U.S.C. §1404(a) 23, 26

29 U.S.C.A. §201 et seq. 21, 23

45 U.S.C. §51 et seq., (FELA) 4, 10, 11, 12, 14, 23

46 U.S.C.A. §56 (FELA) 9

Florida Constitution, Article V, Section 4(2) 2

United States Constitution, Fourteenth Amendment 3, 4, 24, 28

Other Authorities

American Law Institute, *Restatement of the Law*, 29, Conflict of Laws (1971) §84b 23

Stern and Gressman, Supreme Court Practice 3

16 Am.Jur. 2d, *Constitutional Law*, §516 24

16 Am.Jur. 2d, *Constitutional Law*, §533 26

16 A C. J. S., *Constitutional Law*, §561 26

In The
Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Petitioner,

-vs-

JONATHAN W. DIXON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

Petitioner[1] prays that a writ of certiorari issue to review the judgment of the District Court of Appeal, First District, State of Florida, entered in the above-entitled case.

OPINIONS BELOW

The opinion and judgment of the District Court of Appeal, First District, State of Florida, dated November 12, 197[illegible], and here sought to be reviewed, is printed in Appendix G hereto

[1]Petitioner was defendant in the trial court and appellant in the District Court of Appeal, First District, below.

and is reported at 303 So.2d 39. The order of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, dated September 5, 1974, which was affirmed by the judgment here sought to be reviewed, is printed in Appendix D hereto and is not reported. The order of the Supreme Court of Florida, dated June 18, 1975, denying a petition for a writ of certiorari to review the judgment of the District Court of Appeal, First District, State of Florida, is printed in Appendix H hereto and is reported at 315 So.2d 181.

JURISDICTION

The judgment of the District Court of Appeal, First District, State of Florida, was dated November 12, 1974. Thereafter, in an effort to exhaust all possible state court remedies, petitioner timely filed a petition for a writ of certiorari to the Supreme Court of Florida[2] seeking review of the judgment

---

[2]Article V, Section 4(2), of the Florida Constitution provides in part as follows:

> "The Supreme Court may review by certiorari any decision of a District Court of Appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the District Court of Appeal, to be of great public interest, or that is in *direct conflict* with a decision of another District Court of Appeal or of the Supreme Court on the same point of law, and may issue writs of certiorari to commissions established by law." [Emphasis supplied.]

By petition for writ of certiorari, it was pointed out to the Florida Supreme Court that the ruling here is reviewable on "conflict" certiorari. It is squarely contrary to the decision of the Florida Third District Court of Appeal in *Southern Railway Co. v. McCubbins*, 196 So.2d 512 (Fla., 3d D.C.A., 1967). In the *Southern Railway Co.* case, a Virginia corporation doing business in Florida was allowed to apply to the

of the District Court of Appeal. The Supreme Court of Florida denied the petition for a writ of certiorari on June 18, 1975 (315 So.2d 181, Appendix H hereto).

Under these circumstances, the writ of certiorari runs to the District Court of Appeal, First District, State of Florida. See *Missouri K&T R Co. v. Elliot*, 184 U.S. 530 (1902); *Sullivan v. Texas*, 207 U.S. 416 (1908); *Cuyahogarp Co. v. Northern Realty Co.*, 240 U.S. 300 (1917); *Randall v. Board of Commissioners*, 261 U.S. 252 (1923); *American Railway Express Co. v. Levee*, 263 U.S. 19 (1923); *Adam v. Saenger*, 303 U.S. 59 (1938); *Callender v. United States*, 380 U.S. 519, 383 U.S. 270 (1965); *Beckley v. Hanks*, 389 U.S. 81 (1967); and *Stern and Gressman*, Supreme Court Practice, p. 113, 4th Edition; p. 88, 3rd Edition; and p. 79 2nd Edition.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257 (3). The judgment of the Florida District Court of Appeal violates the rights of the petitioner guaranteed by the Fourteenth Amendment to the Constitution of the United States.

---

trial court's discretion under the doctrine of forum non conveniens for a determination as to whether or not because of convenience factors the action could be maintained in Florida, and based upon that doctrine the action was dismissed. In the present case, the Seaboard Coast Line Railroad Company, petitioner herein, was not allowed to apply to the trial court's discretion under the doctrine of forum non conveniens, even though it also was a Virginia corporation doing business in Florida.

Accordingly, petitioner here has exhausted its remedies for review in the courts of Florida and its only recourse now is in the Supreme Court of the United States.

QUESTION PRESENTED

Is it a denial of the equal protection of the laws for Florida to allow its trial courts to apply their discretion under the doctrine of forum non conveniens (i.e., making a determination as to whether or not because of convenience factors the action should be maintained in Florida) on behalf of the Southern Railway Company, a Virginia corporation doing business in Florida, and divest its trial courts of discretion to apply that doctrine in cases involving the Seaboard Coast Line Railroad Company, also a Virginia corporation doing business in Florida?

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States

Amendment XIV:

> ". . . [N]or [shall any state] deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Jonathon W. Dixon, the respondent, brought this suit in the Circuit Court of Duval County, Florida under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§51 et seq. The complaint claimed damages for personal injuries allegedly sustained while in the course and within the scope of respondent's employment with the Seaboard Coast Line Railroad Company (referred to sometimes hereinafter as "SCL"), the petitioner herein. It was filed by the respondent's attorneys (who maintain their offices in Miami, Florida) and complains of an accident which allegedly occurred in Homerville, Georgia on or about February 6, 1973 (Appendix A).

The summons and service copy of the complaint were served on Roderick M. Nicol, as the resident agent designated by the nonresident or foreign defendant corporation to accept service of process in Florida (Appendix B).

The petitioner, defendant below, served upon plaintiff's attorneys its motion to dismiss under the doctrine of forum non conveniens, together with a supporting factual affidavit executed by Mr. Nicol (the aforesaid resident agent for the defendant and also General Solicitor for the defendant corporation). No other evidence was before the court.

The factual situation, as it related to the applicability of the doctrine of forum non conveniens, and as reflected by the record (Appendix C), is as follows:

1. The plaintiff (respondent herein) was, at the time of the alleged accident giving rise to this litigation, and at all times subsequent thereto, a citizen and resident of the State of Georgia.

2. At the time of said accident and at all times subsequent thereto, the defendant SCL (petitioner herein) was, and still is, a corporation organized and existing under the laws of the State of Virginia, with its corporate headquarters and principal corporate offices headquartered and located in Richmond, Virginia. The Chairman of the Board of Directors and Chief Executive Officer of the defendant, the Secretary of the corporation and the Treasurer of the corporation all have permanent offices in the aforesaid principal corporate headquarters and office building in Richmond, Virginia, and all of such principal corporate officers permanently reside in Richmond, Virginia. In addition, the President of the corporation maintains a permanent office at said corporate headquarters in Richmond, Virginia. The Law Department of the

railroad maintains extensive permanent offices in said principal corporate headquarters and an office building in Richmond, Virginia, with personnel of said Law Department permanently residing in Richmond, Virginia, including the General Counsel for the company.

3. The alleged accident which is the subject matter of plaintiff's action occurred at Homerville, Georgia.

4. The alleged accident, if not wholly caused by the negligence of the plaintiff, was caused by the negligence of C. M. Eunice, Jr., trading as Homerville Pole Company in Homerville, Georgia, and since any cause of action by SCL for indemnity against said C. M. Eunice, Jr. did not arise out of any activities of the potential third party defendant in the State of Florida, the defendant will be unable to have the third party action disposed of in the present litigation.

5. All the known witnesses who may be called by plaintiff or defendant, with the exception of two medical doctors recently employed by plaintiff in Miami, Florida, and one medical doctor who saw plaintiff in Jacksonville, Florida, reside in the State of Georgia, as follows:

(a) The other members of the train crew involved in the subject litigation and who have knowledge of the allegations contained in the complaint, all three of whom live in Waycross, Georgia.

(b) The defendant's employees who inspected the premises following the alleged accident, all of whom live in Waycross, Georgia.

(c) The defendant's employees who investigated the alleged accident and who took statements from the various witnesses in preparation of the company's defense of this suit, as well as the Chief Dispatcher and the Superintendent, reside in Waycross, Georgia.

(d) The potential third party defendant and his two employees who have relevant knowledge concerning the alleged accident reside in Homerville, Georgia.

(e) The physicians, five in number, and the physical therapist who have examined and treated plaintiff for his alleged injuries, all reside in Waycross, Georgia, in addition to two medical doctors recently employed by plaintiff from Miami, Florida and a medical doctor who treated plaintiff as a consultant in Jacksonville, Florida.

6. None of the indicated witnesses who reside in Georgia are subject to the subpoena process in the State of Florida, and defendant cannot by any means compel the non-employee witnesses to attend the trial of this case in Jacksonville, Florida, and defendant thereby would be deprived of its legal right to have such witnesses confronted by the jury and the court to determine their veracity and credibility. Furthermore, the potential third party defendant is not subject to service in the State of Florida, and to continue the present suit will result in a multiplicity of litigation and undue and unreasonable expense to the defendant.

7. The trial of this case in the State of Florida will also involve great and unreasonable expense and inconvenience to the defendant in that all the witnesses listed above employed by the defendant, being some eleven in number, must be transported to Jacksonville, Florida, and kept there for the duration of the trial, all at great expense for transportation, housing, and loss of time of these employees, and further, that if the non-employee witnesses are willing to attend the trial, their expenses also would be a great and unwarranted burden upon the defendant.

8. The State of Georgia provides an adequate forum for plaintiff to litigate this cause of action, where the witnesses

reside and where the plaintiff resided and presently resides, and where the potential third party defendant resides and conducts his business. Furthermore, the dockets of the courts of general jurisdiction in Georgia, both state and federal, are not congested, and any suit which plaintiff might institute in that jurisdiction could be expeditiously tried and heard by an impartial court or jury.

9. The litigation of this cause in Jacksonville, Florida constitutes an undue and unnecessary imposition upon a busy Florida court (Circuit Court of Duval County, Florida), adding unnecessarily to its docket a cause of action that arose in another state between nonresident litigants.

Pursuant to notice of hearing served by the defendant, and after argument before the court, the trial court on September 5, 1974 denied defendant's motion to dismiss under the doctrine of forum non conveniens (Appendix D). In the order, the trial court made the following recital:

> "Although there are several sound reasons for the application of the doctrine, the decisions in *Adams v. Seaboard Coast Line Railroad Company*,[3] (Fla.App. 1) 224 So.2d) 797, and *Shaw v. Seaboard Coast Line Railroad Company*, (Fla.App. 1) 229 So.(2d) 275, interdict a judge of this Court from exercising any discretion in the matter."

---

[3]In the *Adams* case, the Florida First District Court of Appeal held "that the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the action are nonresidents, and the cause of action sued upon arose in a jurisdiction outside of Florida," and concludes that for all practical purposes SCL is a Florida resident and is not entitled to claim the benefits of the doctrine.

From this order, the defendant perfected an interlocutory appeal, duly filing and serving its notice of interlocutory appeal (Appendix E).

The District Court of Appeal, First District, in a per curiam decision, dismissed the appeal, stating:

> "Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla. App. 1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App. 1st, 1970), cert. den. 237 So.2d 540 (Fla., 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt, 238 So.2d 473 (Fla. App. 1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App. 1st, 1971), cert. den. 246 So.2d 112 (Fla., 1971). We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So.667 (Fla. 1927) cited by appellant in its reply to appellee's motion." (Appendix G).

In an effort to exhaust all possible state court remedies, petitioner filed a timely petition for a writ of certiorari with the Supreme Court of Florida seeking review of such judgment. The petition for certiorari was denied on June 18, 1975 (Appendix H).

REASONS FOR GRANTING WRIT

Plaintiff Dixon is a nonresident of the State of Florida. The alleged accident which is the subject matter of plaintiff's action occurred outside the State of Florida. Defendant SCL is a Virginia corporation which is doing business in the State of Florida and in Duval County. Under that state of facts, the FELA, 46 U.S.C.A. §56, provides that an aggrieved railroad employee "may" bring his action in the state courts

of any state where the defendant railroad is doing business. The Circuit Court of Duval County, Florida, has jurisdiction to adjudicate this cause. Defendant SCL contends, however, that in this particular case and based upon the record before the lower courts and before this Court, the plaintiff in selecting the Circuit Court of Duval County, Florida as the forum for his litigation has unnecessarily selected an unreasonably inconvenient forum for both parties and for all witnesses, and defendant is entitled to apply to the discretion of the trial court to have the action dismissed under the doctrine of forum non conveniens.

Applicability of the Doctrine of Forum Non Conveniens in an FELA Case

Since this Court's decision in *Missouri ex rel. Southern R. Co. v. Mayfield*, 340 U.S. 1, (1950), it has been recognized that a state court may apply the doctrine of forum non conveniens in an action brought under the FELA so long as it does not discriminate in the application of the doctrine.

Florida Recognizes the Doctrine

The local law of Florida provides for the use of the doctrine of forum non conveniens, with the restriction that both parties to the action must be nonresidents. In *Southern Railway Company v. McCubbins*, 196 So.2d 512 (Fla., 3d D.C.A., 1967), one of the Florida appellate courts applied the doc-

trine of forum non conveniens in an FELA case, stating at page 514 as follows:

> "Subsequent to the passage of [28 U.S.C. §1404(a)] the United States Supreme Court has held that the doctrine can be applied by state courts in FELA cases. Missouri ex rel. Southern Pacific Railway Co., 340 U.S. 1, 71 S.Ct. 1, 95 L.Ed. 3. The doctrine of forum non conveniens is one which is sanctioned by the law of this state, where the cause of action arose in another jurisdiction and neither party resides in Florida. Hagen v. Viney, 124 Fla. 747, 169 So.391."

Many of the circuit judges of Florida have applied the doctrine of forum non conveniens in railroad cases, even (in the past) for the petitioner.

In dismissing the action in *Hubbard v. Southern Ry. Co.*, 14 Fla. Supp. 10 (1959), the trial judge recognized the inherent power of a Florida court to decline jurisdiction even though jurisdiction existed, but where there was another forum which also had jurisdiction over the parties and the subject matter, and where the case could more appropriately and justly be tried elsewhere. Judge Anderson stated at page 12 as follows:

> "The court is constrained to note, however, the anomaly that would result if this court could not enter this order--a state court would have to consider every case brought under the FELA even though a U.S. district court sitting in the same state could transfer the case to another district on the basis of preventing inconvenience and promoting justice [28 U.S.C.A. §1404(a)]."

See Appendix I and discussion at pages 23 and 24, infra, to see the fulfillment of that prophecy.

In *Baker v. Atlantic Coast Line Railroad Co.*, 21 Fla. Supp. 21 (1963), the court dismissed that case with the observation

that plaintiff does not have an "unrestricted" right to maintain these transitory FELA actions in Florida, and that the controlling law in Florida on the application of the doctrine of forum non conveniens "leaves no doubt that the application of the doctrine rests in the sound discretion of the trial judge."

To the same effect, see *Autry v. Seaboard Coast Line Railroad Co.*, 32 Fla. Supp. 53 (1968), where the court held at page 54 as follows:

> "But it makes no sense at all to try this action in Jacksonville, and import everybody and everything from South Carolina and North Carolina in order to do so.
>
> "If the doctrine of forum non conveniens is ever to come into play in litigation in a state court in Florida, this is the sort of situation in which it should do so, for this is a classic case in which there is no balancing of factors of convenience to be done--there being no factors at all making it convenient for anyone to have the trial in Jacksonville. And it seems now to be established that the doctrine is to take its place in Florida law. See Southern Railway Company v. McCubbins, 196 So.2d 512 (D.C.A. 3, Fla., 1967), decided by the same Third District Court of Appeal that had earlier decided Touchton v. Atlantic Coast Line Railroad Company, 155 So.2d 738, 739 (D.C.A. 3, Fla., 1963), quoted approvingly by the First District Court of Appeal in Texas Gulf Sulphur Company v. Downtown Investment Company, supra. See, also, Southern Railway Company v. Bowling, 129 So.2d 433 (D.C.A. 3, Fla., 1961). [Hubbard v. Southern Railway Co., 14 Fla.Supp. 10; Baker v. Atlantic Coast Line R.R. Co., 21 Fla.Supp. 21.]

> "The only way this court could retain this action on its docket is to hold flatly that the doctrine of forum non conveniens is not invokable in a Florida state court under any circumstances. *The law,* as laid down by the First and Third District Courts of Appeal, *is otherwise.*" [Emphasis supplied.]

The restriction that both parties to the action must be nonresidents in order for the doctrine of forum non conveniens to be applied had its genesis in *Hagen v. Viney,* 124 Fla. 747, 169 So. 391 (Fla., 1936), where the Supreme Court of Florida stated at pages 392 and 393 as follows:

> "It is settled law that courts of one state are not required to assume jurisdiction of causes between nonresidents arising in other jurisdictions, though by the rule of comity rather than that of strict right they generally do so. After all is said, the question of jurisdiction in transitory actions between nonresidents is one of discretion on the part of the court assuming it, and no rule has yet been promulgated to guide that discretion."

The issue involved in *Hagen* was whether the courts of Florida had jurisdiction over the nonresident parties and over the transitory cause of action which had arisen in another state. But the application of the doctrine of forum non conveniens presupposes the presence of jurisdiction. If the court lacked jurisdiction, the doctrine would never come into play, since dismissal would be proper in any event, without resorting to the doctrine.

Contrary to the position the Florida courts have taken, the great weight of authority would indicate that the residence of the parties is a factor for consideration in applying the

doctrine of forum non conveniens, but it is not the *sole* determining factor. The Supreme Court of Kansas in the case of *Gonzales v. Atchison T.&S.F. R. Co.*, 371 P.2d 193 (Kan., 1962), said that the fact that Kansas was the defendant railroad's corporate domicile in an FELA suit by no means precluded application of the doctrine where the accident occurred outside the state.

In a well reasoned opinion in the case of *Gore v. United States Steel Corp.*, 104 A.2d 670 (N.J., 1954), the Supreme Court of New Jersey said at pages 675 and 676 as follows:

> "However, the doctrine, as we construe it, is non-discriminatory and does not turn on considerations of domestic residence or citizenship as against foreign residence or citizenship. It turns, rather, on considerations of convenience and justice and it may, therefore, be applied for and against domestic residence and citizens as well as for and against foreign residents and citizens. It is true that under the doctrine an action by or against a resident will ordinarily not be dismissed as being in an inconvenient forum, but it is also true that ordinarily an action by or against a nonresident will not be dismissed as such. It is only in those exceptional cases where a weighing of all of the many relevant factors, of which residence is but a part, decisively establishes that there is available another forum where trial will best serve the convenience of the parties and the ends of justice, that the doctrine is ever invoked."

In the cases of *Koster v. American Lumbermen Mutual Cas. Co.*, 330 U.S. 518, (1947), and *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, (1947), this Court had occasion to apply the doctrine of forum non conveniens and express the major con-

siderations underlying its exercise. In neither case was it said that the doctrine could not be applied to a resident of the state in which the doctrine is attempted to be invoked.

The Florida requirement that the parties to the action be nonresidents in order for the doctrine of forum non conveniens to be invoked discriminates against residents of the State, and it becomes an issue in this case through the convoluted reasoning of the District Court of Appeal, First District, when it says that the Seaboard Coast Line Railroad Company, even though not a domestic corporation, is "for all practical purposes" a resident of Florida and therefore cannot avail itself of the doctrine.

Denial of Equal Protection of the Laws to Seaboard Coast Line Railroad Company

1. SCL as a Nonresident

The issue squarely presented to this Court is whether or not the Florida courts are discriminating against the Seaboard Coast Line Railroad Company in the application of the doctrine of forum non conveniens.

In *Southern Railway Co. v. McCubbins*, supra, the Southern Railway Company, a Virginia corporation doing business in Florida, was allowed to raise and utilize the doctrine of forum non conveniens. In that case the Third District Court of Appeal stated at pages 514 and 515 as follows:

> "Neither of the parties is a resident of the State of Florida. The plaintiff resides in Knoxville, Tennessee, where he has been a registered voter since 1945. The defendant railway company is a Virginia corporation. Its principal office is not in Florida. It has an office

and agent in Dade County, Florida, but does not operate its trains south of Jacksonville."

In *Adams v. Seaboard Coast Line Railroad Co.*,[4] 224 So.2d 797 (Fla., 1st D.C.A., 1969), and its progeny, including the present case, the Seaboard Coast Line Railroad Company, also a Virginia corporation doing business in Florida, is precluded from seeking the benefits of the doctrine of forum non conveniens and making application to the sound discretion of the trial court to determine whether the court should retain jurisdiction of the action or dismiss it without prejudice to the right of the respondent to reinstitute the action in a more appropriate and convenient forum.[5]

The District Court of Appeal, First District, in *Adams v. Seaboard Coast Line Railroad Co.*, supra, recognized the doctrine of forum non conveniens as previously enunciated when it stated at 224 So.2d page 800 as follows:

---

[4]The District Court of Appeal, First District, in its order dismissing the interlocutory appeal, relies on the case of *Adams v. Seaboard Coast Line Railroad Company*, 224 So.2d 797 (Fla., 1st D.C.A., 1969). The other cases cited by the District Court of Appeal in its opinion were subsequently decided on the same basis as the *Adams* decision.

[5]The trial court never made a determination on "convenience factors" whether the motion to dismiss under the doctrine of forum non conveniens should be granted, although it stated that "there are several sound reasons for the application of the doctrine" in this case. The only holding was that it was divested of any discretionary powers to apply the doctrine because of the decisions in *Adams v. Seaboard Coast Line Railroad Co.*, 224 So.2d 797 (Fla., 1st D.C.A., 1969), and *Shaw v. Seaboard Coast Line Railroad Company*, 229 So.2d 275 (Fla., 1st D.C.A., 1970).

> "From the foregoing decisions the principle emerges as the recognized law of this state that if a transitory action is filed in a court of Florida between *nonresident parties* seeking to litigate a cause of action accruing in a foreign jurisdiction, the trial court is accorded a sound discretion in determining whether it should retain jurisdiction of the action or dismiss it without prejudice to the right of the plaintiff to reinstitute the action in a more appropriate and convenient forum . . . In the ultimate, however, it is seen that the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the action are *non-residents*, and the cause of action sued upon arose in a jurisdiction outside of Florida." [Emphasis supplied.]

The District Court held, however, that under the facts as presented in the *Adams* case, supra, SCL, even though a Virginia corporation, is nonetheless a resident of Florida *for all practical purposes*. The court said at page 801 as follows:

> "For all intents and practical purposes insofar as proper venue of this action is concerned, defendant occupies the same position as does a Florida citizen or a Florida corporation. It would appear to us that the mere fact that it received its corporate charter from some other state would not alter its position as an operating entity having its official headquarters and principal place of business in Florida."

The holding of the District Court of Appeal in the instant case, based upon the precedent in the *Adams* case, supra, in which it finds that SCL is a resident of Florida, is a conclusion that is contrary to and is in direct conflict on the same point of law with the decision by the Supreme Court

of Florida in *Fowler v. Chillingworth*, 94 Fla. 1, 113 So. 667 (Fla., 1927).[6]

Fowler v. Chillingworth, supra, is the landmark case in Florida dealing with the question of the *residence of a corporation*. In that case the Supreme Court of Florida stated at page 669 as follows:

> "In the first place a domestic corporation is an artificial person whose residence or domicile is fixed by law within the territorial jurisdiction of the state which created it. That residence cannot be changed temporarily or permanently by the migrations of its officers or agents to other jurisdictions. So long as it is an existing corporation, its residence, citizenship, domicile, or place of abode is within the state which created it. *It cannot reside* or have its domicile *elsewhere;* neither can it in legal contemplation be absent from the state of its creation." [Emphasis supplied.]

The Supreme Court of Florida has therefore flatly held that the mere fact that a corporation received its corporate charter from some other state fixes the exclusive residence of that corporation within the state which created it.[7] This

---

[6]Petitioner submits that "for all practical purposes" on the record before this Court in this case, the residence of SCL is in Virginia, since the corporate headquarters and principal corporate officers reside in Virginia. Even more importantly, however, the *legal* residence of petitioner is in Virginia.

[7]Cf. *Adams v. Seaboard Coast Line Railroad Company*, supra, at p. 801 where the District Court said "it would appear to us that the mere fact that [SCL] received its corporate charter from some other state would not alter" the fact that for all practical purposes SCL is a Florida resident. That erro-

clearly shows that the residence of the Seaboard Coast Line Railroad Company is solely in the State of Virginia and that even under the unusual "nonresidence" requirement in Florida said company, the petitioner herein, is entitled to apply to the trial court to exercise its discretion in the application of the doctrine of forum non conveniens.

Why has the First District Court of Appeal of Florida said that the Seaboard Coast Line Railroad Company *is* for all practical purposes a resident of Florida, but yet the Third District Court of Appeal of Florida says that the Southern Railway Company, which also does business in Florida, has offices, employees and yards in Florida, and operates trains in Florida, *is not* a resident of Florida?

In taking that position the First District Court of Appeal of Florida has denied to SCL the equal protection of the laws, and it is for that reason the petitioner applies to this Court for relief. The situation created is flagrantly unfair. The Southern Railway Company is in active competition with SCL in Florida in the sale of its product, i.e., transportation services, with offices situated in Jacksonville, Orlando, Miami, Tampa and Palatka; it maintains competing train schedules in Florida and provides service at tariff rates equal to SCL's; it has a terminal operation and yard in Jacksonville, enabling it to provide that service; it connects at Jacksonville with the Florida East Coast Railway on a competitive basis with SCL;

---

neous conclusion is based upon a factual finding (which in itself is incorrect) that SCL's principal place of business is in Florida. "Principal place of business" is the language used exclusively in establishing jurisdiction in the federal court, based upon diversity of citizenship, codified in 28 U.S.C. §1332(c), and has no relevance in any other context.

and has roadway and track maintenance equipment and operates company vehicles in the State of Florida.

The principle appears to be well settled that all litigants "similarly situated" stand before the law on equal terms. This Court in the case of *Truax v. Corrigan*, 257 U.S. 312 (1921), stated that principle at pages 331 to 333 as follows:

> "This brings us to consider the effect in this case of that provision of the 14th Amendment which forbids any state to deny to any person the equal protection of the laws. . . . Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law;' 'This is a government of laws, and not of men;' 'No man is above the law,'--all are maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute and apply laws. But the framers and adopters of this Amendment were not content to depend on a mere minimum secured . . . upon the spirit of equality which might not be insisted upon by local public opinion. They therefore embodied that spirit in a specific guaranty. . . .
>
> "Thus, the guaranty was intended to secure *equality of protection* not only *for all*, but against all *similarly situated*. Indeed, protection is not protection unless it does so." [Emphasis supplied.]

Likewise, in the case of *Southern R. Co. v. Greene*, 216 U.S. 400 (1910), the Court said at page 412 as follows:

> "The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the state of Alabama within the meaning of the 14th

> Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation."

See also *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902); *Barbier v. Connolly*, 113 U.S. 27 (1885); *Hayes v. Missouri*, 120 U.S. 68 (1887); *Gulf, Colorado & Santa Fe Railway Co. v. Ellis*, 165 U.S. 150 (1897).

What does it mean to be "similarly situated"? One court has indicated that as between employees in an action under the Fair Labor Standards Act of 1938, 29 U.S.C.A. §201 et seq., the words "similarly situated" apply where there is *any* similarity. *Distelhorst v. Day & Zimmerman*, 58 F.Supp. 334 (S.D. Iowa, 1944). The rationale in the "equal protection" cases is based upon reasonable classification. In *Truax v. Raich*, 239 U.S. 33 (1915), this Court said at page 42:

> "Classification . . . must regard real resemblances and real differences between things and persons, and class them in accordance with their pertinence to the purpose in hand."

The only expressed difference between Southern Railway and SCL is found in the language of the cases at issue. In *Southern Railway Co. v. McCubbins*, supra, the Florida Third District Court of Appeal said about Southern Railway at page 515:

> "The defendant railway company is a Virginia corporation. *Its principal office is not in Florida.* It has an office and agent in Dade County, Florida, but it does not operate its trains south of Jacksonville." [Emphasis supplied.]

In *Adams v. Seaboard Coast Line Railroad Co.*, supra, the Florida First District Court of Appeal recognized that Seaboard Coast Line Railroad Company was a Virginia corporation, but stated as follows at page 801:

> "The evidence further reveals, however, that although the defendant received its corporate charter from the State of Virginia, it *nevertheless maintains its official headquarters and principal place of business in Duval County, Florida.*[8] The trial court was of the view that this factor was immaterial in determining whether the doctrine of forum non conveniens was available as a ground for dismissing the action. With this conclusion we are unable to agree."[9] [Emphasis supplied.]

We submit that it is obvious that SCL is "similarly situated" as to the Southern Railway in Florida, and that any attempted classification of the two because of a difference in the *degree* of business they do in Florida is patently unfair and is purely arbitrary, oppressive and capricious. See *Joseph S. Finch & Co. v. McKittrick*, 23 F. Supp. 244 (W.D. Mo., 1938), affirmed by this Court at 305 U.S. 395.

---

[8]That conclusion, even though irrelevant, is not supported by the undisputed record in this case. SCL has its corporate headquarters and principal corporate offices in Richmond, Virginia. [Appendix C, page A-15.]

[9]Ironically enough, the trial judge referred to was a member of the same First District Court of Appeal in 1966 which applied the doctrine of forum non conveniens to the predecessor corporation to the petitioner in *Atlantic Coast Line Railroad Co. v. Cameron*, 190 So.2d 34 (Fla., 1st D.C.A., 1966), and was then reversed by his former brethren in *Adams*, supra.

Even if Florida were SCL's principal place of business, that factor, put in "residence" terms by the Florida First District Court of Appeal, is only one which should be considered by the trial judge in applying the convenience test. See *Gore v. United States Steel Corp.*, supra, and *Gonzales v. Atchison T. & S. F. R. Co.*, supra.

If Florida is going to say, as it has, that the doctrine of forum non conveniens is inapplicable in a case where one of the litigants is a *resident* of Florida, then it must apply the test of what constitutes a resident without discrimination. The Supreme Court of Florida has said that a foreign corporation is a resident of the state which created it. "It cannot reside . . . elsewhere." *Fowler v. Chillingworth*, supra. To say that SCL is "for all practical purposes" a resident invites abuse and discrimination, and in this case it in fact has been denied the equal protection of the laws.[10]

Since *Adams*, supra, FELA plaintiffs are bringing their foreign suits exclusively in the *State* court against the Seaboard Coast Line Railroad Company, since the United States District Court sitting in Florida would transfer such cases to another district on the basis of preventing inconvenience and promoting justice [28 U.S.C.A. §1404(a)]. A list of the plethora of cases brought in Jacksonville during the five-year period following the *Adams* decision, involving nonresident

---

[10]It is noted emphatically that the only equal treatment being sought by SCL is that it be permitted to apply to the sound discretion of the trial court as to application of the doctrine of forum non conveniens. That is the basis of the doctrine. See American Law Institute, *Restatement of the Law*, 29, Conflict of Laws (1971) §84b. Almost unbelievably, however, where SCL is involved, the trial court is "interdicted" from applying *any* discretion. See Appendix C, page A22.

plaintiffs and causes of action which accrued outside the State of Florida, is set forth in Appendix I. It will be observed that there were sixty-six of those cases (and the list continues to grow), most of which have or will involve many days of jury trials and are often processed through the appellate courts of Florida.

Neither the Southern Railway Company[11] nor any other corporations "similarly situated" in Florida are subjected to that same onerous burden.

2. SCL as a Resident

Even if the Seaboard Coast Line Railroad Company is considered a resident of Florida, the distinction made between residents and nonresidents denies to SCL the equal protection of the laws under the Fourteenth Amendment to the United States Constitution. In Florida the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the transitory action are nonresidents. *Adams v. Seaboard Coast Line Railroad Co.*, supra, at page 800. Thus, in the case of *Southern Railway Co. v. McCubbins*, supra, a nonresident was allowed to apply to the trial court's discretion in the application of the doctrine; but, in the instant case, the Seaboard Coast Line Railroad Company, as a resident (as erroneously decreed by the court in *Adams*) is denied that same opportunity.

The author in 16 Am.Jur. 2d, *Constitutional Law*, §516, states at page 903 that "A statute which discriminates unjustly against residents in favor of nonresidents violates the equal protection clause," citing the case of *Little v. Smith*, 124 Kan. 237, 257 P. 959, 57 ALR 100 (1927). The Kansas

---

[11]It is obvious that the Florida court was absolutely correct in the manner in which it treated Southern Railway. SCL in no way questions Southern's present right to contest any attempt by an out of state plaintiff to litigate in Florida. The error is not in the treatment of Southern, but in the mistreatment of SCL.

Supreme Court said in that case at 257 P. at page 961 as follows:

> "Most of the cases relating to discriminations have arisen where an added and unequal burden was placed upon the nonresident party, but no reason is seen why the resident discriminated against in favor of the nonresident is not entitled to complain and to have the same principle applied and should be awarded the same protection against inequality and injustice."

The doctrine of forum non conveniens is a matter "relating to venue." See *Southern Railway Co. v. Bowling*, 129 So.2d 433 (Fla., 3d D.C.A., 1961), and *Southern Railway Co. v. McCubbins*, supra. In a case dealing with venue, *Power Manufacturing Co. v. Saunders*, 274 U.S. 490 (1927), this Court found a state statute to be unconstitutional as depriving a foreign corporation of the equal protection of the laws where there was a distinction made between the resident and nonresident corporations as to venue in transitory actions. At page 494, the Court said in part as follows:

> "Here the separate classification of foreign corporations is in respect of the venue or place of bringing transitory actions. . . . So far as their situation has any pertinence to the venue of transitory actions it is not distinguishable from that of domestic corporations and individuals. Certainly there is no substantial difference. . . . Of course, the restricted venue as to domestic corporations and individuals is prompted by considerations of convenience and economy; but these considerations have equal application to foreign corporations. So far as the plaintiffs in such actions are affected, it is apparent that there is no more reason for a state-wide venue when the action is against a foreign corporation than when it is against a domestic

> corporation or a natural person. So we conclude that the special classification and discriminatory treatment of foreign corporations are without reasonable basis and essentially arbitrary."

We submit that a deprivation of a resident of the right to defend in the courts of Florida upon terms of equality with nonresidents in the state in respect of the doctrine of forum non conveniens is a denial of the equal protection of the laws. See 16 Am.Jur.2d *Constitutional Law*, §533, and 16A C.J.S. *Constitutional Law*, §561.

The Motion to Dismiss Would Probably Have Been Granted

The plaintiff is a nonresident of the State of Florida; the alleged accident which is the subject matter of the plaintiff's action occurred outside the State of Florida; the defendant is a Virginia corporation doing business in the State of Florida; and the witnesses involved in the case are nonresidents of the State of Florida. Furthermore, the potential third party defendant, who actually caused the alleged accident, if it was not caused by the plaintiff himself, lives outside the State of Florida, in the State of Georgia. It is the existence of the potential third party defendant beyond the subpoena power of the courts of the State of Florida, which has caused the Seaboard Coast Line to attempt to obtain some relief in this Court. That has been an important factor in many cases in considering transfer or dismissal of a case under similar circumstances, and we suggest that the trial court was strongly influenced by that factor, when it stated that "there are several sound reasons for application of the doctrine" in this case [See Appendix D].

The court in *Popkin v. Eastern Airlines, Inc.*, 253 F.Supp. 244 (E.D., Pa., 1966) in a case under 28 U.S.C.A. §1404(a), stated at page 248 as follows:

> "The ability to join third parties in a transferee forum, who may have caused the accident by their negligence is of course an important factor in movant's favor, when the same third parties cannot be joined in the transferor forum."

To like effect, the court in *Brown v. Blidberg Rothchild Co.*, 222 F.Supp. 18 (D. Del., 1963), stated at page 19:

> "The ability to join a third party defendant in the transferee district is a factor in favor of transfer. The transfer will eliminate a perfectly useless additional trial . . . "

In the case of *Thompson Products v. Pennsylvania Railroad Co.*, 127 F.Supp. 449 (S.D., N.Y., 1955), the court transferred an action in favor of having the issues tried in one action. See also *Banachowski v. Atlantic Refining Co.*, 84 F.Supp. 444 (S.D., N.Y., 1949), and *Nicol v. J. C. Penney Co.*, 97 F.Supp. 83 (E.D., Mich., 1951).

The SCL, under the lower court's ruling, will be required to defend the suit in Florida by its employee who contends that the railroad failed to furnish him a safe place to work. The railroad had a nondelegable duty to furnish respondent a safe place to work, even though the alleged unsafe condition was caused by a third party. In this case, the third party culprit is in Georgia. That is where the suit should be tried; otherwise there will be "a perfectly useless additional trial."

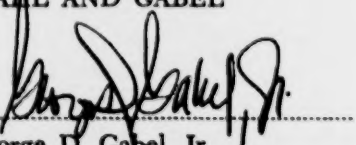
CONCLUSION

The action of the District Court of Appeal, First District in failing to allow the Seaboard Coast Line Railroad Company to apply to the discretion of the trial court for applica-

tion of the doctrine of forum non conveniens, when the Southern Railway Company had been allowed that same protection of the laws by the District Court of Appeal, Third District, both railroad corporations being "similarly situated" in the State of Florida, denies to the petitioner the equal protection of the laws under the Fourteenth Amendment to the United States Constitution and provides this Court with jurisdiction to review decisions below. For the reasons set forth above the petition for a writ of certiorari should be granted and the decision of the District Court of Appeal of Florida, First District, in this case should be reversed and the case remanded to the trial court with directions to exercise its discretion in the application of the doctrine of forum non conveniens.

Respectfully submitted,

WAHL AND GABEL

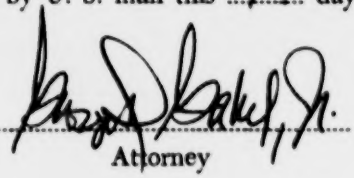


George D. Gabel, Jr.
405 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition with separately bound Appendix was furnished to BECKHAM & McALILEY, 1010 Concord Building, 66 West Flagler Street, Miami, Florida 33130, by U. S. mail this 4th day of September, 1975.



Attorney

SEP 10 1975
MICHAEL RODAK, JR., CL

In The
Supreme Court of the United States

October Term, 1974

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Petitioner,

-vs-

JONATHAN W. DIXON,

Respondent.

APPENDIX
TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

GEORGE D. GABEL, JR.
Wahl and Gabel
405 Florida Title Building
Jacksonville, Florida 32202

Counsel for Petitioner

JAMES E. WILLIAMS
500 Water Street
Jacksonville, Florida 32202

Of Counsel

INDEX TO APPENDIX

Page

APPENDIX A, Complaint served on Defendant Seaboard Coast Line Railroad Company, June 20, 1974 A-1

APPENDIX B, Summons, served on Defendant Seaboard Coast Line Railroad Company, June 20, 1974 A-4

APPENDIX C, Motions of Defendant Seaboard Coast Line Railroad Company, served on Plaintiff's Attorneys, July 10, 1974 ..... A-6

APPENDIX D, Order on Motions, filed September 5, 1974, denying Defendant's Motion to Dismiss Under Doctrine of Forum Non Conveniens A-29

APPENDIX E, Notice of Interlocutory Appeal, filed September 17, 1974, in the District Court of Appeal, First District A-31

APPENDIX F, Assignments of Error, filed September 17, 1974, raising Constitutional question of denial of equal protection of the laws A-33

APPENDIX G, Opinion and Judgment of the District Court of Appeal, First District, filed November 12, 1974, dismissing the Interlocutory Appeal A-36

APPENDIX H, Order of the Supreme Court of Florida, filed June 18, 1975, Denying Certiorari A-38

APPENDIX I, Lawsuits filed in Circuit Court of Duval County, Florida Against Seaboard Coast Line Railroad Company during five year period 1970-1974, in which plaintiffs and majority of witnesses are non-residents of Florida, and causes of action arose outside of the State of Florida A-40

APPENDIX A

Complaint served on Defendant Seaboard Coast Line Railroad Company, June 20, 1974

IN THE CIRCUIT COURT OF THE 4th JUDICIAL CIRCUIT IN AND FOR DUVAL COUNTY, FLORIDA

No. 74-4022 - CA - Div. C

COMPLAINT

JONATHAN W. DIXON,

Plaintiff,

vs.

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Defendant.

Plaintiff sues defendant and alleges:

1. This is a civil action arising under Chapter 45, U.S. Code.

2. At all times material hereto, defendant owned and operated a common carrier railroad engaged in interstate commerce, with its principal place of business at Jacksonville, Florida, and plaintiff was an employee of defendant working in the scope of his employment and in furtherance of interstate commerce.

3. On or about February 6, 1973 at or near the Pole Tree Yard in Homerville, Georgia plaintiff was injured as a result of defendant's negligence while plaintiff, during the performance of his duties, while switching the pole yard, he was hit on the head with a pole, rendering him unconscious and thereby causing serious and grievous personal injuries and damages to plaintiff as hereinafter stated.

4. At the above time and place, defendant was negligent in the following acts of commission and omission:

a. In negligently furnishing plaintiff a dangerous and unsafe place to work.

b. In negligently failing to exercise reasonable care to provide plaintiff with a reasonably safe place to work.

c. In failing to provide plaintiff with reasonably safe equipment with which to perform his duties.

d. In the negligent and careless maintenance, inspection, operation and control of defendant's equipment.

e. In negligently allowing its equipment to be caused to fall, when defendant knew or in the exercise of reasonable care should have known of the condition of its equipment, and had failed to take the necessary steps to remedy said condition.

f. In negligently failing to promulgate and/or enforce rules concerning the loading and use of its equipment by third parties.

g. In the negligent handling and control of defendant's train.

5. As a result of the foregoing negligence, plaintiff was

seriously and permanently injured, among plaintiff's injuries are neck injuries, brain damage, nervousness, diminishment in hearing, and other injuries not yet diagnosed.

6. As a result of the foregoing negligence, plaintiff suffered injuries and damages, including loss of earnings, medical expenses, personal inconvenience and mental and physical pain and suffering due to the injuries to plaintiff's body and nervous system, plus an inability to lead a normal life. These injuries are permanent and in the future plaintiff will suffer loss of wages, loss of earning capacity and medical expenses, personal inconvenience and mental and physical pain and suffering, plus the inability to lead a normal life.

WHEREFORE, plaintiff sues defendant for compensatory damages in excess of Ten thousand ($10,000.00) dollars, together with costs, and demands trial by jury of all issues triable as of right by a jury.

DATED this 24th day of April, 1974.

BECKHAM & McALILEY
A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Attorneys for plaintiff

By /s/ THOMAS W. McALILEY

APPENDIX B

Summons, served on Defendant Seaboard Coast Line Railroad Company, June 20, 1974

IN THE CIRCUIT COURT
OF DUVAL COUNTY, FLORIDA

Civil Action No. 74-4022 - CA - Div. C

JONATHAN W. DIXON,

Plaintiff(s)

vs.

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Defendant(s)

SUMMONS

The State of Florida:

To all and singular the sheriffs of said State:
YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in the above styled cause upon the defendant(s) .....
SEABOARD COAST LINE RAILROAD COMPANY,
a corporation

By serving: Roderick Nicol, General Solicitor
Seaboard Coast Line Railroad Company
Law Department, 500 Water St.
Jacksonville, Florida

Each defendant is hereby required to serve written defenses to said complaint or petition on plaintiff's attorney, whose

name and address is

Beckham & McAliley,
A Professional Association
1010 Concord Building
66 W. Flagler St.
Miami, Fla. 33130
Phone: 305-373-6551

within 20 days after service of this summons upon that defendant, exclusive of the day of service, and to file the original of said written defenses with the clerk of said court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said Court on
JUNE 19, 1974

S. MORGAN SLAUGHTER
As Clerk of said Court

CATHERINE ROCHE
As Deputy Clerk

APPENDIX C

**Motions of Defendant
Seaboard Coast Line Railroad Company,
served on Plaintiff's Attorneys, July 10, 1974**

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN
AND FOR DUVAL COUNTY, FLORIDA

No. 74-4022-CA DIVISION "C"

JONATHAN W. DIXON,

Plaintiff,

-vs-

SEABOARD COAST LINE RAILROAD
COMPANY, a corporation,
Defendant.

MOTIONS OF DEFENDANT

COMES NOW the Defendant, SEABOARD COAST LINE RAILROAD COMPANY, a corporation, by and through its undersigned attorneys, and moves the Court as follows:

1. To dismiss the Complaint for failure to state a cause of action against this Defendant.

2. To dismiss the Complaint for lack of jurisdiction over the person.

3. To dismiss the Complaint for improper venue under the doctrine of forum non conveniens.

MOTION TO DISMISS
FOR FAILURE TO STATE A CAUSE OF ACTION

(a) The allegations of negligence are insufficient as a matter of law.

(b) The allegations of the Complaint are conclusions of the pleader and not ultimate fact.

MOTION TO DISMISS
FOR LACK OF JURISDICTION OVER THE PERSON

The Complaint shows on its face that the subject matter for which said cause of action was filed did not arise out of any of the Defendant's activities in the State of Florida.

MOTION TO DISMISS
FOR IMPROPER VENUE UNDER
DOCTRINE OF FORUM NON CONVENIENS

(a) The Defendant is a foreign corporation, as is shown by the Affidavit of Mr. Roderick M. Nicol, which is attached hereto as Exhibit "A".

(b) The Plaintiff was, at the time of the alleged accident giving rise to this litigation, and at all times subsequent thereto, a citizen and resident of the State of Georgia, and is presently maintaining his residence in Waycross, Georgia.

(c) As shown by Exhibit "A", the alleged accident, if not caused wholly by the negligence of the Plaintiff, was caused by the negligence of C. M. Eunice, Jr., trading as Homerville Pole Company in Homerville, Georgia, which is in Ware County, near Waycross, Georgia which is the county seat of Ware County, and, further, since the cause of action for in-

demnity against said C. M. Eunice, Jr. did not arise out of any activities of the potential third party defendant in the State of Florida, the Defendant will be unable to have the third party action disposed of in the present litigation.

(d) The Plaintiff's action is brought under the Federal Employer's Liability Act and is to be tried pursuant to that statute and not under the laws or statutes of the State of Florida.

(e) The alleged accident which is the subject matter of Plaintiff's action occurred at Homerville, Georgia.

(f) To the best of Defendant's information and belief, all of the witnesses who may be called by Plaintiff or Defendant, with the exception of two medical doctors recently employed by Plaintiff in Miami, Florida, and one medical doctor who saw Plaintiff in Jacksonville, Florida, reside in the State of Georgia, as follows:

(1) The other members of the train crew involved in the subject litigation and who have knowledge of the allegations contained in the Complaint, all three of whom live in Waycross, Georgia.

(2) The Defendant's employees who inspected the premises following the alleged accident, all four of whom live in Waycross, Georgia.

(3) The Defendant's employees who investigated the alleged accident and who took statements from the various witnesses in preparation of the company's defense of this suit, as well as the chief dispatcher and the superintendent, reside in Waycross, Georgia.

(4) The potential third party defendant, and his two employees who have relevant knowledge concerning the

alleged accident, reside in Homerville, Georgia.

(5) The physicians, being five in number, and the physical therapist who have examined and treated Plaintiff for his alleged injuries, all reside in Waycross, Georgia, with the exception of two medical doctors recently employed by Plaintiff in Miami, Florida, and a medical doctor who treated Plaintiff as a consultant in Jacksonville, Florida.

(g) Defendant states that none of the indicated witnesses who reside in Georgia are subject to the subpoena process in the State of Florida, and Defendant cannot, by any means, compel the non-employee witnesses to attend the trial of this case in Jacksonville, Florida, and Defendant thereby would be deprived of its legal right to have such witnesses confronted by the jury in this Court to determine their veracity and credibility. Furthermore, the potential third party defendant is not subject to service in the State of Florida, and to continue the present suit will result in a multiplicity of litigation and undue and unreasonable expense to the Defendant.

(h) The trial of this case in the State of Florida will also involve great and unreasonable expenses and inconvenience to the Defendant in that all of the witnesses listed above employed by the Defendant, being some eleven in number, must be transported to Jacksonville, Florida, and kept there for the duration of the trial, all at great expense for transportation, housing, and loss of time of these employees, and further, that if the non-employee witnesses are willing to attend the trial, their expenses also would be a great and unwarranted burden upon the Defendant.

(i) The Defendant asserts that this Honorable Court has

the inherent power, in the interest of convenience of the parties and witnesses and in the interest of justice, to dismiss the above case without prejudice. *Hagen v. Viney,* 169 So. 391; *Southern Railway Co. v. Bowling,* 129 So. 2d 33; *Baker v. Atlantic Coast Line Railroad Co.,* 21 Fla. Supp. 21; *Hubbard v. Atlantic Coast Line Railroad Co.,* 21 Fla. Supp. 21; *Hubbard v. Southern Railway Co.,* 14 Fla. Supp. 10; *Autry v. Seaboard Coast Line Railroad Co.,* 32 Fla. Supp. 53. Defendant submits that there is no logical compulsion on the courts of this State to try, at the expense of the State of Florida and its several counties, and at the expense and inconvenience of the Florida litigants and Florida attorneys, cases between nonresidents and foreign corporations where the cause of action arises outside of the State of Florida. The Third District Court of Appeal in *Southern Railway Co. v. McCubbins,* 196 So.2d 512, in holding that it was an abuse of discretion not to dismiss an action when required by the facts, stated at page 517 as follows:

> "When the facts and circumstances presented meet the guidelines which are regarded in law as the basis for dismissal under the doctrine, jurisdiction should be rejected. It is an abuse of discretion for a trial judge, notwithstanding such an adequate showing, to retain jurisdiction on the basis of a willingness to have the case added to his docket. This is so because denial of such a motion where the elements are present upon which the doctrine should be applied amounts to a refusal to give due effect to the law of this State under which the doctrine of forum non conveniens is accepted."

(j) The First District Court of Appeal has ruled in the case of *Adams v. Seaboard Coast Line Railroad Co.,* 224 So. 2d 797, that the doctrine of forum non conveniens does not

apply to the Seaboard Coast Line Railroad Company as between an injured employee from Waycross, Georgia and the railroad. That case was also followed in *Shaw v. Seaboard Coast Line Railroad Company*, 229 So. 2d 275. In neither the *Adams* nor the *Shaw* cases was a non-resident potential third party defendant involved, and defendant respectfully submits that those two decisions are not controlling in the present case.

(k) The Defendant further shows that the Congress has recognized that the calendars of the United States District Courts were being congested and witnesses and parties were being imposed upon by bringing of so-called imported and exported cases from remote jurisdiction, and for the convenience of parties and witnesses and in the interest of justice, enacted Section 1404(a), U.S.C., Title 28, and the Supreme Court of the United States has since sustained the constitutionality of such Section, and held that such Section applied to the venue of any and all civil cases, and, in particular, permitted the transfer of cases arising under the Federal Employer's Liability Act. Defendant submits that if the instant action had been instituted in the United States District Court at Jacksonville, that the same would have been transferred to the proper jurisdiction under the doctrine of forum non conveniens.

(l) The Defendant further shows that the Supreme Court of the United States in the case of *State of Missouri ex rel Southern Railway Company v. Mayfield*, 340 U.S. 1, 95 L.ed 6, has held that the Federal lalw does not limit the power of the state to deny access to its courts to suitors under the Federal Employer's Liability Act if in similar cases, the state, for reasons of local policy, denies resort to its courts, so long as it enforces its policy impartially so as not to discriminate

against suits under the Act and not to offend the privileges and immunities clause, and that a State Court is in no way bound by Federal law in determining the applicability of the doctrine of forum non conveniens.

(m) The Defendant herein respectfully submits that to deny its Motion to Dismiss upon the doctrine of forum non conveniens, the Defendant will be deprived of equal protection of the laws, as guaranteed to it by Sections 1, 4 and 12 of the Declaration of Rights to the Constitution of the State of Florida and the Fourteenth Amendment to the Constitution of the United States.

(n) The Defendant asserts that the instant suit should be dismissed without prejudice by this Court upon the doctrine of forum non conveniens, based upon the reasons stated above, and upon the Affidavit of Mr. Roderick M. Nicol, which is attached hereto as Exhibit "A".

(o) Defendant believes that this action was brought to this county by Plaintiff not only for the purpose of avoiding a trial at or near his residence or where the alleged cause of action arose, but also for the purpose of vexatiously harrassing and annoying the Defendant and subjecting it to unnecessary and unreasonable inconvenience and expense, for nothing appears evident to the Defendant to justify the selection of a forum in Florida other than that the Plaintiff is engaged in the astute practice of shopping for a forum, an act not favored by the judiciary, and Defendant prays that the suit be dismissed without prejudice, at the cost of the Plaintiff.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

George D. Gabel, Jr.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Jacksonville, Florida, Attorneys for Plaintiff, by mail this 10th day of July, 1974.

/s/ George D. Gabel, Jr.
Attorney

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN
AND FOR DUVAL COUNTY, FLORIDA

No. 74-4022-CA DIVISION "C"

JONATHAN W. DIXON,

Plaintiff,

-vs-

COMPANY, a corporation,

Defendant.

**AFFIDAVIT IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
UNDER DOCTRINE OF FORUM NON CONVENIENS**

STATE OF FLORIDA
COUNTY OF DUVAL

RODERICK M. NICOL, being first duly sworn, deposes and says:

I am General Solicitor for SEABOARD COAST LINE RAILROAD COMPANY, the Defendant in the above-captioned suit, and in that position I have reviewed the investigation file relating to the alleged accident involved in this suit and know of my own knowledge the witnesses whose testimony will be required by the Defendant to adequately and properly defend this suit and to prosecute its claim against the industry upon whom responsibility for this matter should rest.

Defendant is in the business of operating a railroad with its principal offices at Richmond, Virginia and Jacksonville, Florida. It is a common carrier for hire, operating a line of railroad through the States of Virginia, North Carolina, Georgia, Florida and Alabama. At all times material to this controversy and up to the date of this Affidavit, the said SEABOARD COAST LINE RAILROAD COMPANY, is and has been a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its corporate headquarters and principal corporate offices headquartered and located at 3600 West Broad Street, Richmond, Virginia; that Affiant is and has been at all times material to this controversy the duly designated and authorized Resident Agent in the State of Florida for the service of process upon said SEABOARD COAST LINE RAIROAD COMPANY, which is a non-resident corporation, duly authorized to do business in the State of Florida, and that in such capacity, the Affiant was served with process in the instant lawsuit, all in accordance with the laws of the State of Florida with reference to service of process upon non-resident or foreign corporations which are authorized to do business in the State of Florida. Affiant further deposes and says that the Chairman of the Board of Directors and Chief Executive Officer, the Secretary of the corporation, the Treasurer of the corporation, all have permanent offices in the aforesaid principal corporate headquarters and office building in Richmond, Virginia, and all of such principal corporate officers permanently reside in Richmond, Virginia. In addition, the President of the corporation also maintains a permanent office at said corporate headquarters in Richmond, Virginia. The Law Department of the railroad maintains extensive permanent offices in said principal corporate headquarters and office building in Richmond, Virginia, with personnel of said Law Department per-

manently residing in Richmond, Virginia. Among such Law Department personnel are the General Counsel, four Assistant General Solicitors, one Assistant General Attorney, two Attorneys, and several Claim Agents. Affiant further deposes and says that eleven meetings of Defendant's corporate Board of Directors are held each year (usually one each month) for the purpose of transacting necessary corporate business; that only approximately one of such meetings each year is held in Jacksonville, Florida; with approximately one of such meetings each year being held in the aforesaid corporate headquarters and office building in Richmond, Virginia; and the balance of such meetings being usually held in New York, N.Y.

As appears from the Complaint, this action is brought by Plaintiff to recover more than TEN THOUSAND ($10,000) DOLLARS for alleged personal injuries sustained by Plaintiff during the course of his employment by the Defendant at Homerville, Ware County, Georgia, on February 6, 1973.

In order to adequately and properly defend this action, it will be necessary for the Defendant to produce at the trial thereof no less than five non-employee witnesses who are doctors practicing medicine at Waycross, Georgia, one non-employee witness who is a physical therapist at Waycross, Georgia, and no less than eleven employee witnesses all of whom reside in Waycross, Georgia.

As further appears from the Complaint, the Plaintiff alleges that he was injured by a piece of falling equipment. The investigation file relating to the alleged accident reveals that the alleged accident, if not caused wholly by the negligence of the Plaintiff, was caused by the negligence of C. M. Eunice, Jr., trading as Homerville Pole Company, who placed the piece of equipment, allegedly involved on Defendant's car, and that under a sidetrack agreement, dated November 1, 1970, be-

tween SEABOARD COAST LINE RAILROAD COMPANY and C. M. Eunice, Jr., trading as Homerville Pole Company, resides in Homerville, Georgia which is in Ware County, near Waycross, Georgia which is the county seat of the said Ware County; and that the said C. M. Eunice, Jr. conducts his business at Homerville, Georgia where the Plaintiff was allegedly injured and where at least two persons are employed by the said C. M. Eunice, Jr., in the conduct of his business and who will necessarily be witnesses for prosecution of the said indemnity claim. Since the cause of action for said indemnity did not arise out of any activities of the potential third party defendant in the State of Florida, the Defendant will be unable to have the third party action disposed of in the present litigation.

Affiant is informed and believes that the trial of this case in Jacksonville, Florida would be inconvenient to and would work a hardship upon all of said witnesses, assuming that their attendance would be compelled by subpoena which it cannot. This Defendant will not be able to compel the non-employee witnesses to attend the trial of this case in Jacksonville, Florida, and it will thereby be deprived of its legal rights to have such witnesses confronted by the jury and by this Court to determine their veracity and credibility.

This Affiant further avers that the trial of this case in Jacksonville, Florida would impose on the Defendant an unreasonable and unnecessary expense in transporting its employee and non-employee witnesses to Jacksonville, Florida and assuming the expenses of their maintenance there far removed from their respective residences for the duration of the trial, as well as reimbursement of employees for time lost from their regular duties while appearing in court and traveling to and from the place of trial.

Upon information and belief, this Affiant is of the opinion that in the interest of justice and for the convenience of the parties and witnesses, this case is not properly brought in this Court and should be dismissed without prejudice to Plaintiff's right to re-institute this proceeding at Waycross, Georgia, where the witnesses reside and could readily be produced, and where the potential third party defendant resides and can be sued.

The Plaintiff in this case was maintaining his residence at 1301 McDonald Street, Waycross, Georgia, at the time of his alleged injury on February 6, 1973. Affiant verily believes that Plaintiff presently maintains his residence at Waycross, Georgia and has no intention of become a resident of Florida.

The State of Georgia provides an adequate forum for Plaintiff to litigate this cause of action at Waycross, Georgia, where the witnesses reside and where the Plaintiff resided and presently resides, and where the potential third party defendant resides and conducts his business. Affiant is informed and believes that the dockets of the courts of general jurisdiction at that location are not congested and that any suit which plaintiff might institute in that jurisdiction could be expeditiously tried and heard by an impartial court and jury.

Moreover, the Court, the jurors and the taxpayers of Jacksonville, Florida should not be burdened with the expense of this proceeding which involves non-residents of the State of Florida, where the cause of action did not arise in the State of Florida, nor arise out of any of the Defendant's activities within the State of Florida, especially where the entire matter

could be disposed of in one proceeding if brought in a Georgia forum.

/s/ Roderick M. Nicol

Roderick M. Nicol

Sworn to and subscribed before me
this 10th day of July, 1974.

/s/ Charlotte M. Baker

Notary Public, State of Florida at Large

My Commission Expires:

J&B-50028 Form 212–Sheet 1.
Revised Nov. 1, 1959.

THIS AGREEMENT, made this 1st day of November, 1970, between the SEABOARD COAST LINE RAILROAD COMPANY, hereinafter referred to as the Railroad, and C. M. Eunice, Jr., of Waycross, Georgia, trading as HOMERVILLE POLE COMPANY, hereinafter referred to (severally, if more than one) as the Industry;

WITNESSETH:–that

WHEREAS, the Industry desires track facilities, hereinafter called sidetrack, at or near Poletree (near Homerville) County of Clinch, State of Georgia, to serve concentration yard of the Industry for the handling of carload shipments of fence posts, poles, etc.; said sidetrack being shown in red and green on the print dated February 26, 1964, last revised November 23, 1970, of Plan No. 676-1, hereto attached and made a part hereof, and more particularly described as follows:

Track No. 1:

Diverging from the south side of the Railroad's Thomasville Subdivision main track at location 1917 feet northeastwardly from Milepost AN-612, and extending southwestwardly and southwardly 1339 feet; the first 169.5 feet on right of way of the Railroad, the next 139.5 feet on that portion of the Railroad's right of way which is leased to the Industry pursuant to the provisions of Article 10 hereof, and the last 1030 feet on property of or provided by the Industry; and

Track No. 2:

Diverging from the north side of said Track No. 1, at location 94 feet from the switch point thereof and extending

southwestwardly and southwardly 1410 feet; the first 150 feet on right of way of the Railroad, the next 215 feet on that portion of the Railroad's right of way which is leased to the Industry pursuant to the provisions of Article 10 hereof, and the last 1045 feet on property of or provided by the Industry.

Said sidetrack was heretofore provided on basis of the Railroad's predecessor, at its expense, constructing the first 169.5 feet of track No. 1 and the first 150 feet of track No. 2; and the Industry's predecessor, at its expense, constructing the last 1169.5 feet of track No. 1 and the last 1260 feet of track No. 2; and now covered by agreement dated December 1, 1964, between Atlantic Coastline Railroad Company (predecessor of Railroad) and Atlantic Creosoting Company, (predecessor of Industry), which agreement will be terminated and superseded simultaneously with the execution hereof.

The Railroad owns the first 169.5 feet of track No. 1 and the first 150 feet of track No. 2, and the Industry owns the last 1169.5 feet of track No. 1 and the last 1260 feet of track No. 2.

Now, therefore, in consideration of the covenants and agreements herein contained, it is mutually agreed that the said sidetrack shall be maintained, and operated under the following terms and conditions:

J&B-32451 Form 212—Sheet 2.
Revised Nov. 1, 1959.

1. RIGHT OF WAY.

(a). The Industry shall provide, without cost to the Railroad, all necessary right of way outside of the right of way of the Railroad, required for the proper operation of said side-

track, said right of way to be satisfactory to the Chief Engineer or other proper officer of the Railroad.

b). The Railroad, its officers and employees, shall have the right to enter upon the property of or leased to the Industry for the purpose of operating said sidetrack.

3. MAINTENANCE.

(a). Said sidetrack shall be maintained and/or renewed to the satisfaction of the Chief Engineer, or other proper officer of the Railroad; the work shall be performed and the cost thereof borne as follows:

(b). The Railroad shall maintain and/or renew the first 169.5 feet of track No. 1 and the first 150 feet of track No. 2.

(c). The Industry shall, without cost to the Railroad, maintain and/or renew the last 1196.5 feet of track No. 1 and the last 1260 feet of track No. 2.

4. OWNERSHIP.

(a). The title and ownership of said sidetrack shall be as follows:

(b). Track material furnished by the Railroad, at its expense, and laid in said sidetrack on the right of way or premises of the Railroad or on the premises of, or right of way furnished by the Industry, shall remain the property of the Railroad. Upon termination of this agreement the Railroad shall have the right to enter upon the property of the Industry and upon any right of way provided by the Industry and to remove any or all of the material owned by the Railroad, and shall not be liable to account in any way to anyone for monies paid or expended on account of any of the track or tracks covered by this agreement.

(c). Track material furnished by the Industry or its predecessor and laid in said sidetrack on the right of way or premises of the Railroad shall remain the property of the Industry, subject to use hereunder by the Railroad. Upon the termination of this agreement the Industry shall remove such material and restore said right of way and premises to a condition satisfactory to the Chief Engineer, or other proper officer of the Railroad. In the event of the failure of the Industry so to do, the Railroad may remove such material and restore said right of way or premises at the cost and expense of the Industry, which cost and expense the Industry hereby agrees to pay the Railroad on demand.

5. USE.

(a). The Railroad shall have the right to use, without cost, the whole or any part of said sidetrack to reach industries, if any, located thereon or reached thereby, provided such use shall not unreasonably interfere with the use thereof by the Industry, and to this end the Industry agrees to permit said sidetrack to be extended or connected with other sidetracks.

(b). The Industry shall not, without the written consent of the Railroad, permit or authorize any use of, extension of, or connection with said sidetrack by or for the benefit of any other person, firm or corporation not one of the parties hereto, nor assign this contract or any rights hereunder.

6. CHANGES OR ENLARGEMENT.

(a). If any change, rearrangement, extension or enlargement of said sidetrack or its structures shall at any time be required by reason of any charge in the Railroad's track or tracks, or because of any changes in the operating practices of the Raillroad, or for any other cause, then and in that event

any expense or damage resulting from such change, rearrangement, extension or enlargement of the portion of said sidetrack owned by the Industry or of the Industry's facilities adjacent or appurtenant thereto shall be borne by the Industry.

(b). If said sidetrack or its appurtenances should be relocated, extended or enlarged, either by the Railroad or by the Industry, then the sidetrack as relocated, rearranged, extended or enlarge shall be fully covered by all of the terms and provisions hereof as fully as though described herein as so relocated, rearranged, extended or enlarged and so shown upon the print attached hereto.

7. CLEARANCES.

(a). The Industry agrees not to permit any obstruction over said sidetrack having a clearance of less than twenty-two (22) feet above the top of the rail for the full width of the horizontal clearance hereinafter provided for, or parallel with said sidetrack within eight (8) feet of the center line of said sidetrack, with the necessary additional clearance on curves. All structures erected over the sidetrack shall be built and maintained in a manner satisfactory to the Chief Engineer or other proper officer of the Railroad. All wires suspended over said sidetrack shall be placed and maintained at the elevations and in accordance with the standards prescribed by the National Electric Safety Code.

(b). Notwithstanding any other provision herein contained, the Industry shall and does hereby expressly assume and agree to indemnity and hold harmless the Railroad from and against all loss and damage, costs, expenses, including attorneys' fees, claims suits and judgments whatsoever arising from or growing out of any injuries, loss or damage caused by or contrib-

uted to by the failure of the Industry, its employees, agents or licensees, (i) to comply with the provisions of this Article 7, or (ii) to keep the right of way said said sidetrack free and clear of all commodities, rubbish, trash or other objects which may be hazardous to those engaged in the operation of the Railroad.

8. OPERATION AND LIABILITY.

(a). All car load shipments consigned to the Industry for delivery on said sidetrack shall be deemed to have been fully and completely delivered as soon as the car containing such shipment shall have been placed on the sidetrack and detached from the engine or train by which it was moved, and the Railroad shall thereupon be fully and completely relieved from any liability, either as common carrier or as bailee, for loss of or injury to such shipment occurring after such delivery. The Railroad shall not be liable as common carrier, nor as bailee, for any property loaded into any car on said sidetrack until said car is attached or coupled to the engine or train by which it is to be moved from said sidetrack toward its destination, or until a bill of lading shall have been issued to the Industry therefor, and until said car is so attached or coupled up, or a bill of lading is issued therefor, the said car and its contents shall be deemed and held to be in the possession of the Industry so far as liability therefor is concerned.

(b). The Industry will promptly at its own cost and expense, load or unload all cars which are placed on said sidetrack for loading or unloading by the Industry, and will not allow cars delivered to the Industry on said sidetrack to be removed therefrom except by the Railroad; and in the event of damage to or destruction of such cars or contents while on said sidetrack, except loss due to fire or as the result of

negligence of the agents or employees of the Railroad, the Industry will make good and pay to the Railroad the loss accruing from such damage to or destruction of such cars and contents.

(c). It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises regardless of railroad negligence, arising from fire caused by locomotives operated by the Railroad on said sidetrack, or in its vicinity for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the source of transportation.

(d). The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage or injury and including attorneys' fees in case of litigation, from any act or omission of the Industry, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said sidetrack; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties it shall be borne by them equally.

e). Notwithstanding any other provision herein contained, the Industry shall and does hereby expressly agree, in the event said sidetrack shall be used for the receipt or delivery of tank or other cars containing dangerous commodities, whether explosive, combustible, non-inflammable, poisonous or otherwise, to assume, indemnify, and hold harmless the Railroad from and against all loss and damage, costs, expenses, including attorneys' fees, claims, suits, and judgments, whatsoever arising from or growing out of any injuries, loss or dam-

age which may be caused or contributed to by the presence on said sidetrack of such cars and the dangerous nature of the commodities for which such cars are used, and whether such injuries, loss or damage from fire, explosion, collapse or any other cause.

9. TERMINATION.

(a). It is expressly understood and agreed that if the Industry fails to keep and perform any of the covenants, terms, or conditions, herein set forth to be kept and performed by the Industry, then the Railroad reserves the right to terminate this agreement upon thirty days' written notice to the Industry. Unless so terminated, this agreement shall continue in force for the period of thirty (30) days from the date first above written, and thereafter, until terminated by either party hereto upon thirty days' notice in writing to the other party.

(b). Unless terminated as hereinabove provided this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

10. RIGHT OF WAY (cont'd).

The Railroad, for and in consideration of One Dollar to it in hand paid by Industry, and other valuable considerations, receipt of which is hereby acknowledged, hereby demises and leases unto Industry during the tenure of this agreement for maintaining and using portions of said sidetrack all those certain parcels of land, property of the Railroad, described as follows and shown in RED on attached print:

(a) 13 feet in width, being 6.5 feet on each side of the center line of track No. 1, commencing 169.5 feet from the switch point thereof and extending southwestwardly a mean distance of 139.5 feet; and

(b) 13 feet in width, being 6.5 feet on each side of the center line of track No. 2, commencing 150 feet from the switch point thereof and extending southwestwardly a mean distance of 215 feet.

NOTE: The following changes were made in this agreement prior to its execution:
Now, Therefore Clause: The word "constructed" deleted.
Article 1(a): The words "construction and" deleted.
Article 1(b): The words "or leased to" added; the words "constructing, maintaining, and/or" deleted.
Article 2: Deleted.
Article 4(c): The words "or its predecessor" added.
Article 10: Added.
In Witness Whereof Clause: The word "effective" added.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly signed, sealed and delivered in duplicate, effective the day and year first above written.

WITNESSES FOR RAILROAD:
/s/ James A. Sutton
/s/ C. Dennis Thompson

WITNESSES FOR INDUSTRY:
/s/ S. E. Cole
/s/ M. B. Peacock

SEABOARD COAST LINE
RAILROAD COMPANY
By /s/ D. C. Hastings (L. S.)
D. C. Hastings, Vice President - Operations

/s/ C. M. Eunice, Jr. (L. S.)
(C. M. Eunice, Jr.), trading as
HOMERVILLE POLE COMPANY.

APPENDIX D

Order on Motions, filed September 5, 1974, denying Defendant's Motion to Dismiss Under Doctrine of Forum Non Conveniens

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY.

NO. 74-4022-CA DIVISION C

JONATHAN W. DIXON,

Plaintiff,

vs.

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Defendant.

ORDER ON MOTIONS

This cause came on for hearing on the matters herein disposed of and was argued by counsel for the respective parties.

The chief contention of defendant is that the action should be dismissed under the doctrine of "forum non conveniens." Although there are several sound reasons for the application of the doctrine, the decisions in *Adams vs. Seaboard Coast Line Railroad Company* (Fla. App. 1) 224 So.(2d) 797, and *Shaw v. Seaboard Coast Line Railroad Company* (Fla. App. 1) 229 So.(2d) 275, interdict a judge of this Court from exercising any discretion in the matter.

Accordingly, it is ORDERED AND ADJUDGED that the "Motions of Defendant," filed July 12, 1974, are denied, and it is required to answer the complaint within ten days from date hereof.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 5th day of September, A. D. 1974.

/s/ John M. McNatt

CIRCUIT JUDGE

cc: Beckham & McAliley
1010 Concord Bldg.
Miami, Florida 33130

George D. Gabel, Jr., Esq.
1014 Barnett Bank Bldg.
Jacksonville, Florida 32202

APPENDIX E

Notice of Interlocutory Appeal, filed September 17, 1974, in the District Court of Appeal, First District

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY

CASE NO. 74-4022-CA DIVISION "C"

JONATHAN W. DIXON,

Plaintiff,

-vs-

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Defendant.

NOTICE OF INTERLOCUTORY APPEAL

SEABOARD COAST LINE RAILROAD COMPANY, a corporation, the Defendant in the above-styled cause, takes and enters its interlocutory appeal to the Court of Appeal, First District, State of Florida, to review the order, judgment or decree of the Circuit Court, Fourth Florida Judicial Circuit of Florida, in and for Duval County, Florida, bearing date the 5th day of September, A.D. 1947, and rendered on the 5th day of September, 1974, by the filing thereof with the Clerk of the above-captioned Court. The nature of the order appealed from is an order denying this Defendant's Motion to

Dismiss under the common law doctrine of Forum Non Conveniens. All parties to said cause are called upon to take notice of this interlocutory appeal.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

George D. Gabel, Jr.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September, 1974.

/s/ George D. Gabel, Jr.

Attorney

APPENDIX F

Assignments of Error, filed September 17, 1974, raising Constitutional question of denial of equal protection of the laws

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY

CASE NO. 74-4022-CA DIVISION "C"

JONATHAN W. DIXON,

Plaintiff,

-vs-

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Defendant.

ASSIGNMENT OF ERROR

The Defendant, SEABOARD COAST LINE RAILROAD COMPANY, a corporation, assigns as error to be asserted and relied upon by it on its Interlocutory Appeal, simultaneously entered in this cause, the following:

1. The above-styled Court erred in denying Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens by the entry of its Order dated September 5, 1974, and filed with the Clerk of said Court on September 5, 1974.

2. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non

Conveniens constituted an abuse of said Court's judicial discretion, and said Court is thus in error.

3. Having made a judicial determination in its Order of September 5, 1974, that there are several sound reasons for the application of the doctrine of Forum Non Conveniens in this case, the above-styled court erred in refusing to dismiss this action on said grounds; and said Court is thus in error.

4. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens constituted an improper rejection of the established doctrine of Forum Non Conveniens, and said Court is thus in error.

5. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens deprives this Defendant of its constitutional right to "equal protection of the laws," as guaranteed by Sections 1, 4 and 12 of the Declaration of Rights to the Constitution of the State of Florida, and by the Fourteenth Amendment to the Constitution of the United States of America; and said Court is thus in error.

Dated at Jacksonville, Florida this 16th day of September, A.D., 1974.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

George D. Gabel, Jr.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September, 1974.

/s/ George D. Gabel, Jr.

Attorney

APPENDIX G

Opinion and Judgment of the District Court of Appeal, First District, filed November 12, 1974, dismissing the Interlocutory Appeal

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT STATE OF FLORIDA
JULY TERM, A. D. 1974.

NOT FINAL UNTIL TIME EXPIRES TO
FILE REHEARING PETITION AND
DISPOSITION THEREOF IF FILED

CASE NO. W-451

SEABOARD COAST LINE
RAILROAD CO.,

Appellant,

vs.

JONATHAN W. DIXON,

Appellee.

Opinion filed November 12, 1974.

An Interlocutory Appeal from the Circuit Court for Duval County. John M. McNatt, Judge.

George D. Gabel, Jr., of Wahl & Gabel, for Appellant.

R. J. Beckham, of Beckham & McAliley, for Appellee.

PER CURIAM.

Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla.App. 1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App. 1st, 1970), cert. den. 237 So.2d 540 (Fla. 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt, 238 So.2d 473 (Fla.App. 1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla. App. 1st, 1971), cert. den. 246 So.2d 112 (Fla. 1971). We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (Fla. 1927) cited by appellant in its reply to appellee's motion.

RAWLS, Chief Judge, McCORD and JOHNSON, JJ., CONCUR.

APPENDIX H

Order of the Supreme Court of Florida, filed June 18, 1975, Denying Certiorari

SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1975

WEDNESDAY, JUNE 18, 1975

CASE NO. 46,597

DISTRICT COURT OF APPEAL,
FIRST DISTRICT
W-451

SEABOARD COAST LINE RAILROAD CO.,

Petitioner,

vs.

JONATHAN DIXON,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, BOYD, OVERTON, and ENGLAND, J.J., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.
By: Judy Whittle
Deputy Clerk

CC: Hon. Raymond E. Rhodes, Clerk
Hon. S. Morgan Slaughter, Clerk
Hon. John M. McNatt, Judge

George D. Gabel, Jr., Esquire
James E. Williams, Esquire
R. J. Beckham, Esquire

APPENDIX I

LAWSUITS FILED IN CIRCUIT COURT OF DUVAL COUNTY, FLORIDA AGAINST SEABOARD COAST LINE RAILROAD COMPANY DURING FIVE YEAR PERIOD 1970-1974, IN WHICH PLAINTIFFS AND MAJORITY OF WITNESSES ARE NON-RESIDENTS OF FLORIDA, AND CAUSES OF ACTION AROSE OUTSIDE OF THE STATE OF FLORIDA

PLAINTIFFS	*CAUSES OF ACTION AROSE*	*CASE NO.*
French E. Hodges	Hamlet, N. C.	70-2849
Clyde C. West	Atlanta, Ga.	70-1128
Robert L. Human	Atlanta, Ga.	70-1166
J. M. Brooker	Waycross, Ga.	70-4193
Yewell Adams	Waycross, Ga.	70-5051
C. E. Robinson	Florence, S. C.	70-7002
M. H. Stanton	Darlington, S. C.	70-7068
S. V. Tarber	Waycross, Ga.	70-8215
B. D. Johnson	Creedmor, N. C.	70-8805
J. Allen Straughan	Coosaw, S. C.	70-8437
R. A. Powell	Blackshear, Ga.	70-8345
Eugene Taylor	Waycross, Ga.	71-1043
Edgar A. Rogers	Cameron, S. C.	71-1450
V. I. Hicks	Waycross, Ga.	71-2981
Alvin Adams	Albany, Ga.	71-6603
Harmon Pittman	Atlanta, Ga.	71-6604
L. M. King	Charleston, S. C.	71-5802
A. L. Allred	Cofield, N. C.	71-8674
Early Gordon	Waycross, Ga.	71-10112
J. C. Carter	Waycross, Ga.	71-10471
Richard Lifscomb	Yemasee, S. C.	71-11521

PLAINTIFFS	*CAUSES OF ACTION AROSE*	*CASE NO.*
H. M. Robbins	Waycross, Ga.	72-63
F. E. Pate	Americus, Ga.	72-98
James H. Stegall	Collier Yard, Va.	72-470
Samuel Davis	Charleston, S. C.	72-2106
Floyd A. Ledford, Jr.	Cayce, S. C.	72-2107
Chas. F. Roberts	Golden, Ga.	72-2689
S. G. Osteen	Acme, N. C.	72-2698
J. G. Hunt	Durham, N. C.	72-2700
C. E. Robinson	Morven, N. C.	72-3875
S. G. Hughes	Greenwood, S. C.	72-4288
Frankie Lee Jones	Waycross, Ga.	72-6073
I. White	Waycross, Ga.	72-6858
S. J. Steedley	Screven, Ga.	72-7259
O. I. Caines	Sunny Point, N. C.	72-7834
Wm. C. Cranford	Laureno, S. C.	72-9352
Edward C. Kelly	McCormick, S. C.	72-9409
L. J. Johnson	Waycross, Ga.	72-9527
Henry Cobb	Woodbine & Stillwell, Ga.	72-10158
W. E. Smith	Charleston, S. C.	72-10446
Raymond D. Taylor	Thomasville, Ga.	72-11133
W. J. Hunnicutt	Waycross, Ga.	73-249
C. R. Sires	Waycross, Ga.	73-1161
R. E. Douberly	Kingsland, Ga.	73-1650
W. K. Harrison	Brunswick, Ga.	73-4104
Joe Barron	Charlotte, N. C.	73-5009
E. T. Ruffner	Sholls, N. C.	73-5008
John M. Hall	Atlanta, Ga.	73-8784
W. R. Thornton	Waycross, Ga.	73-10586
W. E. Stegall	Raleigh, N. C.	73-11151
G. W. Carr	Charlotte, N. C.	74-1420
E. H. Duncan, Jr.	Waycross, Ga.	74-4021
J. W. Dixon	Homerville, Ga.	74-4022
R. M. Crews	Waycross, Ga.	74-4448
Charles A. Garmon	Atlanta, Ga.	74-4378
A. Hill	Waycross, Ga.	74-4849
C. R. Morris	Waycross, Ga.	74-6263

PLAINTIFFS	*CAUSES OF ACTION AROSE*	*CASE NO.*
Joseph D. Clark	Jessup, Ga.	74-6364
Henry Massey	Alafaha, Ga.	74-6264
Leo Porter	Waycross, Ga.	74-8127
Bobby Wade Holland	Tifton, Ga.	74-11743
W. W. Hills, Jr.	Lodge, S. C.	74-11175
Jessie L. Knight	Brunswick, Ga.	74-11779
R. L. Guinn	Waycross, Ga.	74-12205
J. C. Gibbs, Jr.	Brunswick, Ga.	74-12666
W. C. Holliday	Wilmington, N. C.	74-12663

Supreme Court, U.
FILED
AUG 9 1975
MICHAEL RODAK, JR.,

Supreme Court, U.
FILED
OCT 9 1975
MICHAEL RODAK, JR., CL

In the Supreme Court of the United States

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner,

vs.

JONATHAN W. DIXON,

Respondent,

OPPOSITION BRIEF

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

ROBERT J. BECKHAM
BECKHAM & McALILEY
A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Counsel for Respondent

MIAMI REVIEW — 371-4853 — 377-3721

CITATIONS

Case	Page
Adams v. Seaboard Coast Line Railroad, 224 So.2d 797 (Fla.App.1969)	2, 9, 11
Anderson v. Hultberg, 238 U.S. 605 (1915)	7
Chicago v. E.I.R. Co. v. Industrial Commission, 284 U.S. 296 (1932)	5
Clark v. Pennsylvania, 128 U.S. 395 (1888)	4
Connecticut ex rel. New York & N.E.R. Co. v. Woodruff, 153 U.S. 689 (1894)	6
Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (1927)	8
Gregory v. McVeigh, 23 Wall. 294 (1875)	4
Hagen v. Viney, 124 Fla. 747, 169 So. 391 (1936)	9
Missouri ex rel. Southern Railroad Co. v. Mayfield, 340 U.S. 1 (1950)	7, 9, 12
Missouri K. & T.R. Co. v. Elliott, 184 U.S. 530 (1902)	4

CITATIONS (cont.)

Case	Page
Nash v. Florida Industrial Commission, 389 U.S. 235 (1968)	5
Ocean Insurance Co. v. Polleys, 38 U.S. 157 (1839)	6
Randall v. Tippecanoe County, 261 U.S. 252 (1923)	5
Seaboard Coast Line Railroad Co. v. Ford and Seaboard Coast Line Railroad Co. v. Britt (consolidated), 238 So.2d 473 (Fla.App.1970)	2, 10
Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App.1971), cert. den., 246 So.2d 112 (Fla.1971)	2, 10
Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App.1970), cert. den., 237 So.2d 540	2, 10
Smith v. Adsit, 83 U.S. 185 (1872)	7
Southern Rwy. Co. v. Bowling, 129 So.2d 433 (Fla.App.1961)	8
Southern Railway Co. v. McCubbins, 196 So.2d 512 (Fla.App.1967)	9, 10

CITATIONS (cont.)

Case	Page
Southwestern Bell Telephone Co. v. State of Oklahoma, 303 U.S. 206 (1938)	6
Western Union Tel. Co. v. Hughes, 203 U.S. 505 (1906)	4

OTHER AUTHORITIES

28 U.S.C. §1257	4
28 U.S.C. §1332(c)	10
45 U.S.C. §51 et seq.	1
Fla.App. Rule 4.5(c)(6)	3

in the
Supreme Court
of the
United States

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner,

vs.

JONATHAN W. DIXON,

Respondent,

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

NATURE OF THE CASE

This is a case in which Jonathan W. Dixon (hereinafter referred to as "Dixon") filed a Federal Employer's Liability action[1] against his employer Seaboard Coast Line Railroad Company (hereinafter referred to as "Seaboard") in a Florida state court.

[1]The action was brought pursuant to 45 U.S.C. §51 et seq.

Dixon resided in Georgia and sustained an injury in Georgia in the course and scope of his employment. The action was brought in Jacksonville, Florida, less than 100 miles away and the situs of Seaboard's principal place of business in Jacksonville.[2] Seaboard moved to dismiss the case in the Circuit Court on the theory of forum non conveniens, alleging that another forum would be a more convenient place to bring the suit. The lower court denied the motion (see Dixon's Exhibit "A" attached hereto). The lower court, in denying the motion, applied Florida law which does not allow the application of forum non conveniens when one of the parties is a Florida resident; and the Florida courts have defined a corporation having a principal place of business in Florida to be a "resident." See *Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797* (Fla.App.1969); *Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275* (Fla.App.1970), cert. den. 237 So.2d 540; *Seaboard Coast Line Railroad Co. v. Ford, Seaboard Coast Line Railroad Co. v. Britt* (consolidated cases) 238 So.2d 473 (Fla.App.1970), and *Seaboard Coast Line Railroad Co. v. West*, 242 So.2d 156 (Fla.App.1971).

Seaboard then took an interlocutory appeal to the First District Court of Appeal of Florida stating in its assignments of error that the lower court abused its discretion in failing to apply the doctrine of forum non con-

---

[2]Seaboard has admitted that the Jacksonville headquarters of Seaboard is a principal office (see Seaboard's Appendix 15), and Seaboard, in its brief in the court below, further admitted "that the defendant has an operating office building in Jacksonville, Florida, which certainly can be described as a principal office." Additionally, Jacksonville has been judicially noticed and adjudicated by the Florida courts as the principal place of business of Seaboard. E.g. *Adams v. Seaboard Coast Line Railroad*, 224 So.2d 797 (Fla.App.1969).

veniens.[3] The right to appeal to the intermediate appellate courts of Florida is not absolute by virtue of Florida Appellate Rule 3.9(b), which provides for the dismissal of an appeal where it appears on its face to be frivolous or taken for the purpose of delay. Dixon moved to dismiss the appeal pursuant to that rule (See Dixon's Exhibit "C-1" attached) and the First District Court of Appeal, on November 12, 1974, granted Dixon's motion (see Dixon's Exhibit "C-2" attached hereto.) Thus, the ground for dismissing the appeal was that it was frivolous and taken for delay.

Seaboard then petitioned, on December 12, 1974, for writ of certiorari to the Supreme Court of Florida (see Dixon's Exhibit "D" attached hereto). Seaboard's petition was denied six months later on June 18, 1975, for lack of jurisdiction (see Dixon's Exhibit "E" attached hereto).[4]

Seaboard now seeks a petition for writ of certiorari in the Supreme Court of the United States, filing it within ninety days from the date the Supreme Court of Florida denied its petition for writ of certiorari. Seaboard, however, directs the writ to the First District Court of Appeal.

---

[3]See Dixon's Exhibits "B-1" and "B-2" attached hereto.

[4]Florida Appellate Rule 4.5(c)(6) allows a petition for writ of certiorari to be taken from the District Court of Appeal to the Supreme Court of Florida within thirty days. If an automatic stay is desired, the petition must be taken within fifteen days from the District Court's decision. Here, the petition was sought by Seaboard after the fifteen day period and, thus, no stay was granted. (See Dixon's Exhibit "F" attached hereto.)

REASONS FOR NOT GRANTING THE WRIT

We respectfully suggest this Court should deny the Petition for the following grounds:

A. *The petition for writ of certiorari should be directed to the state trial court rather than the District Court of Appeal.*

Because the Supreme Court of Florida refused to take jurisdiction of the case below, counsel agrees with Seaboard that the writ of certiorari should not run to the Supreme Court of Florida.

Normally, the writ of error from the United States Supreme Court is to review judgments rendered "by the highest court of a State in which a decision could be had," 28 U.S.C. §1257. However, the writ should be directed to the judgment of an inferior state court where the higher courts have declined an appeal. See *Clark v. Pennsylvania*, 128 U.S. 395, (1888), *Gregory v. McVeigh*, 23 Wall. 294 (1875), and *Chicago & E.I.R. Co. v. Industrial Commission*, 284 U.S. 296 (1932). See also *Missouri K. & T.R. Co. v. Elliott*, 184 U.S. 530 (1902), and *Western Union Tel. Co. v. Hughes*, 203 U.S. 505 (1906).

It is clear that when an appellate court could—but refuses—to take jurisdiction of a case, the inferior court becomes the highest state court from which to petition to the United States Supreme Court.

Here, the Supreme Court of Florida refused to take jurisdiction of the case although it had the discretionary power to do so, but also was this true of the intermediate

appellate court, to-wit: the District Court of Appeal. Seaboard filed an interlocutory notice of appeal in the First District Court of Appeal, *but* the First District Court of Appeal dismissed the case and refused to hear it because the appeal was frivolous and filed for delay. Thus, the highest state court in which a decision could be had in the instant case was the trial court.

In *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1968), the petitioner (Nash) had a hearing before the State Unemployment Compensation Board. (This, for all intents and purposes, would be considered the "trial court.") Nash, then, sought certiorari review of that decision in the Florida District Court of Appeal which, per curiam, refused to hear the case. (Nash did not even then apply for relief from the Florida Supreme Court apparently because that Court, at that time, would not take jurisdiction of cases from a per curiam decision of a District Court of Appeal denying a petition for certiorari (See 389 U.S. at p. 237). Accordingly, the petition for writ of certiorari in the United States Supreme Court was directed to the "trial court," i.e., the Compensation Board, because the two appellate courts, i.e., the District Court of Appeal and Supreme Court, could have, but refused to take jurisdiction of the case.

It is abundantly clear from the record that both appellate courts in the case at bar have refused to take jurisdiction of the case and the writ should be directed to the trial court. Failure to direct a writ to the proper court requires the Supreme Court of the United States to dismiss the writ. See *Randall v. Tippecanoe County*, 261 U.S. 252 (1923).

B. *The decision of the state court did not involve a federal question.*

Because Seaboard seeks a writ of certiorari to the District Court of Appeal, First District, we must look to that opinion to determine whether the First District Court of Appeal's decision was based on a federal question. This Court has no jurisdiction to review a state court decision unless it appears affirmatively from the record not only that a federal question was presented for decision to the highest court of the state, but that the federal question was necessary to the determination of the case. See *Southwestern Bell Telephone Co. v. State of Oklahoma*, 303 U.S. 206 (1938).

The decision should have involved a federal question which was applied by the court in arriving at its decision. See *Ocean Insurance Co. v. Polleys*, 38 U.S. 157, (1839).

Although a federal question may be raised in state court, this Court will not entertain jurisdiction of the writ to the state court if the state court's decision was clearly decided on grounds not involving a federal question. E.g., *Connecticut ex rel. New York & N. E. R. Co. v. Woodruff*, 153 U.S. 689 (1894).

In looking at the decision of the court to which this writ is directed, i.e., the First District Court of Appeal, we see that the court dismissed the case because the appeal was frivolous and taken for delay. Thus, the decision (if that is what it is to be called) did not in any way involve a federal question. This Court has refused to take jurisdiction of state court decisions, such as the

one herein, which were dismissed for reasons not involving a federal question. See *Anderson v. Hultberg*, 238 U.S. 605 (1915).

There is no way one can construe a decision of the District Court of Appeal dismissing a claim, without opinion, for frivolity as resting upon a federal claim.

Even assuming that the per curiam decision of the First District Court of Appeal is tantamount to an affirmance of the trial court's ruling that the doctrine of forum non conveniens was not applicable in the case below, however, that decision is nevertheless solely a "question of state law, and not subject to review by the United States Supreme Court." *Smith v. Adsit*, 83 U.S. 185, (1872).

The essence of the question in the court below was whether or not the State of Florida would—as a matter of state policy—apply the doctrine of forum non conveniens only to non-residents, and not to residents. This determination is a proper function of the states and, in the absence of discriminatory application, is a local function not subject to federal review. *Missouri ex rel. Southern Railroad Co. v. Mayfield*, 340 U.S. 1 (1950).

Seaboard's petition (pp. 15-19) reveals the absence of any federal question as well. What Seaboard seeks from this Court is a ruling that the Florida Supreme Court erred when it denied Seaboard's assertion that the decision below *conflicted* with the Florida Supreme Court's

decision in *Fowler v. Chillingworth*, 94 Fla. 1, 113 So. 667 (1927).[5] Again, in footnote 7 (petition pp. 18-19) Seaboard asserts a *factual finding* of the Florida courts is erroneous—a purely "state law" matter.

C. *Florida does not violate the "equal protection of the law clause" in its application of the forum non conveniens doctrine.*

The two bases for the *possibility* that a state's venue policy may involve a federal question, said Justice Frankfurter, would be (a) if a state (mistakenly) felt it was bound by federal law and could not formulate its own policy for the application of the doctrine, or (b) if a state discriminated as between its citizens and those of other states. (*Missouri v. Mayfield*, 340 U.S. at pp. 3-4). Neither predicate is found in Florida:

(A) The Florida courts have applied the doctrine of forum non conveniens as a matter of state policy—and not under a (mistaken) view that federal law precludes state determination. Southern Rwy. Co. v. Bowling

[5] *In Fowler v. Chillingworth*, plaintiff filed a mortgage foreclosure proceeding against a corporation chartered in Florida. However, the resident agent and all the corporate officers had moved from Florida and the Sheriff issued a non-executed return. The *sole* question before the Florida Supreme Court was whether or not proper service could be obtained upon a Florida corporation when there were no officers available for service of process. The court, in the context of the facts before it, merely stated that a corporation is always a resident of the state where it is chartered so that service can be made without the presence of corporate officers. It was not necessary for the court to mention, under those circumstances, that even though a corporation may be a "resident" of the state where it is chartered, it can be (and in 1975 usually is) a "resident" of other states for particular purposes, *i.e.*, venue, taxation, service of process, jurisdiction, etc.

129 So.2d 433 (Fla.App. 1961); Southern Rwy. Co. v. McCubbins 196 So.2d 512 (Fla.App.1967); Adams v. S.C.L. 224 So.2d 797 (Fla.App.1969).

(B) The Florida policy is a non-discriminatory one, applying equally to all, and requires as a *sine qua non* that both parties be "non-residents" before the doctrine can be invoked.

E.g., Adams v. S.C.L., supra; Hagen v. Viney 124 Fla 747, 169 So. 391 (1936).

Seaboard asserts denial of equal protection by Florida in two fashions:

1. The Florida courts' factual determination that Seaboard's operations in Florida are of such magnitude as to justify a finding that its principal place of business is in Florida; and

2. The Florida policy precluding the application of the doctrine of forum non conveniens to litigation involving residents of Florida.

Both assertions fail.

1. *Residency: Facts Established*

As Seaboard acknowledges, the issue as to its "resident" status was settled in *Adams v. S.C.L.*, 224 So.2d 797 (Fla.App.1969). Thereafter, the matter was repeatedly presented to the Florida appellate courts which, in turn,

repeatedly found Seaboard to be a "resident" for purposes of the doctrine of forum non conveniens. *Shaw v. S.C.L.*, 229 So.2d 275 (Fla.App.1970) *cert. den.*, 237 So. 2d 540 (Fla.1970); *S.C.L. v. Ford & Britt*, 238 So.2d 473 (Fla.App.1970); and *S.C.L. v. West*, 242 So.2d 156 (Fla. App.1971), *cert. den.*, 246 So.2d 112 (Fla.1971). As Seaboard likewise acknowledges, as a result of the fact that it had been factually adjudicated to maintain its principal place of business in Florida by the above decisions, its instant effort was dismissed upon respondent's motion, grounded upon the frivolous nature of Seaboard's position on this well adjudicated factual matter.

2. *Residency: A Valid Criterion*

Seaboard's complaint that the situs of its principal place of business should not control such factual finding is quickly demolished by reference to 28 U.S.C., §1332 (c). Congress there recognized that the location of a corporation's principal place of business shall control the determination as to whether such corporation may have access to the federal courts. Surely, Florida may utilize the same criterion.

Were Seaboard — like Southern Railway — factually found to have its principal place of business in Virginia, then Seaboard—like Southern—could get relief in appropriate circumstances. See *Southern Rwy. Co. v. McCubbins*, 196 So.2d 512 (Fla.App.1967), Seaboard, like every other Florida resident, however, is logically and non-discriminatorily called upon to respond to the courts in its "home" state. This precisely meets the test of *Missouri v. Mayfield*, supra:

> "Residents" and "non-residents" may be treated differently under the Constitution, so long as a state does not favor its own citizens. See 340 U.S. pg. 4.

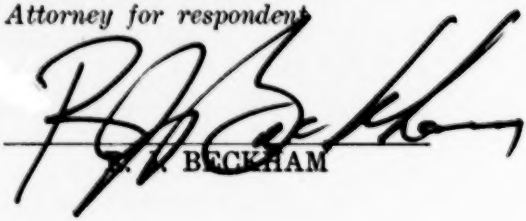
The Florida courts are directly in line with the established precedent of this Court. Seaboard is treated by the courts of Florida "in the same manner as if it were a citizen of Florida." *Adams v. S.C.L.*, 224 So.2d 797, 802 (Fla.App. 1969).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

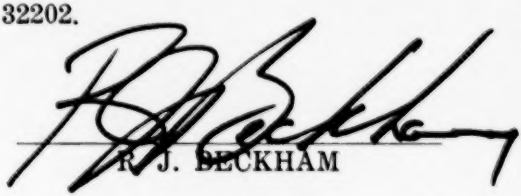
R. J. BECKHAM
BECKHAM & McALILEY
A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Attorney for respondent



R. J. BECKHAM

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing Response to Petition for Writ of Certiorari to the District Court of Appeal, First District, State of Florida, was mailed this 8 day of October, 1975, to George D. Gabel, Jr., Wahl and Gabel, 405 Florida Title Building, Jacksonville, Florida 32202.



R. J. BECKHAM

APPENDIX

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY.

NO. 74-4022-CA DIVISION C

JONATHAN W. DIXON,

Plaintiff,

vs.

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Defendant.

ORDER ON MOTIONS

This cause came on for hearing on the matters herein disposed of and was argued by counsel for the respective parties.

The chief contention of defendant is that the action should be dismissed under doctrine of "forum non conviens". Although there are several sound reasons for the application of the doctrine, the decisions in Adams vs. Seaboard Coast Line Railroad Company (Fla. App. 1) 244 So.(2d) 797, and Shaw v. Seaboard Coast Line Railroad Company (Fla. App. 1) 229 So.(2d) 275, interdict a judge of this Court from exercising any discretion in the matter.

Accordingly, it is ORDERED AND ADJUDGED that the "Motions of Defendant", filed July 12, 1974, are denied, and it is required to answer the complaint within ten days from date hereof.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 5th day of September, A.D. 1974.

/s/ John M. McNatt

CIRCUIT JUDGE

cc: Beckham & McAliley
1010 Concord Bldg.
Miami, Florida 33130

George D. Gabel, Jr., Esq.
1014 Barnett Bank Bldg.
Jacksonville, Florida 32202

EXHIBIT "B-1"

[TITLE OMITTED]

NOTICE OF INTERLOCUTORY APPEAL

SEABOARD COAST LINE RAILROAD COMPANY, a corporation, the Defendant in the above-styled cause, takes and enters its interlocutory appeal to the Court of Appeal, First District, State of Florida, to review the order, judgment or decree of the Circuit Court, Fourth Judicial Circuit of Florida, in and for Duval County, Florida, bearing the date the 5th day of September, A.D. 1974, and rendered on the 5th day of September, 1974, by the filing thereof with the Clerk of the above-captioned Court. The nature of the order appealed from is an arder denying this Defendant's Motion to Dismiss under the common law doctrine of Forum Non Conveniens. All parties to said cause are called upon to take notice of this interlocutory appeal.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September, 1974.

/s/ George D. Gabel, Jr.

Attorney

EXHIBIT "B-2"

[TITLE OMITTED]

ASSIGNMENTS OF ERROR

The Defendant, SEABOARD COAST LINE RAILROAD COMPANY, a corporation, assigns as error to be asserted and relied upon by it on its Interlocutory Appeal, simultaneously entered in this cause, the following:

1. The above-styled Court erred in denying Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens by the entry of its Order dated September 5, 1974, and filed with the Clerk of said Court on September 5, 1974.

2. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens constituted an abuse of said Court's judicial discretion, and said Court is thus in error.

3. Having made a judicial determination in its Order of September 5, 1974, that there are several sound reasons for the application of the doctrine of Forum Non Conveniens in this case, the above-styled court erred in refusing to dismiss this action on said grounds; and said Court is thus in error.

4. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens constituted an improper rejection of the established doctrine of Forum Non Conveniens, and said Court is thus in error.

5. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens deprives this Defendant of its constitutional right to "equal protection of the laws", as guaranteed by Sections 1, 4 and 12 of the Declaration of Rights to the Constitution of the State of Florida, and by the Fourteenth Amendment to the Constitution of the United States of America; and said Court is thus in error.

Dated at Jacksonville, Florida this 16th day of September, A.D., 1974.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September, 1974.

/s/ George D. Gabel, Jr.

Attorney

EXHIBIT "C-1"

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

NO. W-451

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

vs.

JONATHAN W. DIXON,

Appellee.

MOTION TO QUASH APPEAL AND ALTERNATIVE MOTION TO DISMISS

Appellee, pursuant to Florida Appellate Rule 3.9, moves the Court to enter an Order quashing this appeal on the grounds that it is frivolous or taken only for the purpose of delay.

In support of this motion, appellee would show the Court that the precise point of law raised by appellant has been previously adjudicated by this Court in the following reported decisions:

1. Adams v. S.C.L. RR.,
   224 So.2d 797 (Fla.App.1969);

2. Shaw v. S.C.L. RR.,
229 So.2d 275 (Fla.App.1970); cert.den. 237 So. 2d 540;

3. S.C.L. RR v. Ford,
and
S.C.L. RR. v. Britt,
(consolidated cases) 238 So.2d 473 (Fla.App. 1970);

4. S.C.L. RR v. West,
242 So.2d 156 (Fla.App.1971)

In the alternative, appellee would show that this appeal should be dismissed pursuant to Florida Appellate Rule 4.2(c), which states, with specific regard to interlocutory appeals, that:

> "If it affirmatively appears that the appeal is frivolous, was not taken in good faith, was taken for delay, or is without substantial merit, it will be dismissed and the cost of the proceeding imposed on the appellant."
> (Emphasis added)

In support of this alternative motion, appellee would show that this appeal is "without substantial merit" in that the specific point herein appealed has been already decided in the five above-mentioned prior cases, against this same appellant.

WHEREFORE, appellee moves this Court to quash or, alternatively, dismiss this appeal.

WE CERTIFY that a true copy of the foregoing was mailed this 9 day of October, 1974 to George Gabel, Esq., 1014 Barnett Bank Building, Jacksonville, Florida 32202.

BECKHAM & McALILEY
A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Attorneys for appellee

By /s/ R. J. Beckham
R. J. BECKHAM

EXHIBIT "C-2"

[TITLE OMITTED]

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED

Opinion filed November 12, 1974.

An Interlocutory Appeal from the Circuit Court for Duval County. John M. McNatt, Judge.

George D. Gabel, Jr., of Wahl & Gabel, for Appellant.

R. J. Beckham, of Beckham & McAliley, for Appellee.

PER CURIAM.

Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla.App. 1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App. 1st, 1970), cert.den. 237 So.2d 540 (Fla. 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt, 238 So.2d 473 (Fla.App. 1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App. 1st, 1971), cert.den. 246 So.2d 112 (Fla. 1971). We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So.667 (Fla. 1927) cited by appellant in its reply to appellee's motion.

RAWLS, Chief Judge,

McCORD and JOHNSON, JJ., Concur.

EXHIBIT "D"

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

No. _____

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner,

-vs-

JONATHAN W. DIXON,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT

CERTIFICATE OF FILING IN THE DISTRICT COURT OF APPEAL OF PETITION FOR CERTIORARI

Pursuant to Florida Appellate Rule 4.5c(6), Petitioner files herewith in the Florida District Court of

Appeal, First District, a copy of Petition for Certiorari, which it is today forwarding to the Supreme Court of Florida.

WAHL and GABEL

By /s/ George D. Gable, Jr.

GEORGE D. GABEL, JR.
405 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Petitioner

I HEREBY CERTFY that a copy of the foregoing has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, have filed the original in the District Court of Appeal, First District, and furnished a copy to the Supreme Court of Florida, by mail, this 10th day of December, 1974.

/s/ George D. Gabel, Jr.

[TITLE OMITTED]

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, Seaboard Coast Line Railroad Company (sometimes hereinafter called SCL), presents this, its petition for a writ of certiorari and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal, First District, dated the 12th day of November, 1974, and filed in the records of said District Court on the 12th day of November, 1974, in Minute Book 7, Page 342.

2. This petition is presented under the pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida, and Rule 4.5c(6), of the Florida Appellate Rules.

3. This petition is accompanied by a conformed copy of the pertinent proceedings, including the decision petitioner seeks to have reviewed, and a supporting brief.

4. The following are the facts of the case:

(a) This is a suit by an employee, Jonathan W. Dixon, (hereinafter sometimes called Dixon) against his employer (SCL) seeking money damages for claimed personal injuries allegedly sustained while in the course and within the scope of his employment. The suit has been

brought under the provisions of the Federal Employers' Liability Act (FELA), Title 45, Section 51 et seq., U.S. Code Annotated.

(b) Respondent Dixon is a nonresident of the State of Florida, and is a resident of the State of Georgia. The alleged accident which is the subject matter of respondent's action occurred outside the State of Florida at Homerville, Georgia. Petitioner SCL is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its corporate headquarters and principal corporate officers headquartered and located in Richmond, Virginia. The said accident, if not wholly caused by the negligence of the plaintiff, was caused by the negligence of C. M. Eunice, Jr., trading as Homerville Pole Company in Homerville, Georgia, and since any cause of action by SCL for indemnity against said C. M. Eunice, Jr. did not arise out of any activities of the potential third party defendant in the State of Florida, SCL will be unable to have the third party action disposed of in the present litigation.

(c) Petitioner SCL, the defendant below, filed a motion to dismiss under the doctrine of forum non conveniens, together with a supporting factual affidavit. No other evidence was before the court.

(d) The trial court denied petitioner's motion to dismiss, and in its order, dated September 5, 1974, made the following recital:

> "Although there are several sound reasons for the application of the doctrine, the decisions in Adams v. Seaboard Coast Line Railroad Com-

> pany, (Fla.App.1) 224 So. (2d) 797 and Shaw v. Seaboard Coast Line Railroad Company (Fla. App.1) 229 So. (2d) 275, interdict a judge of this Court from exercising any discretion in the matter."

5. On the foregoing facts the District Court of Appeal, First District, was presented with the following point of law:

> In a case in which both parties to the action are nonresidents and the cause of action sued upon arose in a jurisdiction outside of Florida, did the trial court err in refusing to exercise any discretion in determining whether it should apply the doctrine of forum non conveniens as to this defendant?

On this point of law the District Court of Appeal, First District, rendered the following per curiam decision:

> "Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla.App.1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App.1st, 1970), cert.den. 237 So.2d 540 (Fla., 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt 238 So.2d 473 (Fla.App.1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App.1st, 1971), cert.den. 246 So.2d 112 (Fla., 1971), We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So.667 (Fla. 1927) cited by appellant in its reply to appellee's motion."

6. The sole point of law involved in this petition concerns the residence of SCL. If SCL is a nonresident of the State of Florida, then it is entitled to seek the benefits of the doctrine of forum non conveniens and to make application to the sound discretion of the trial court in determining whether it should retain jurisdiction of the action or dismiss it without prejudice to the right of the respondent to reinstitute the action in a more appropriate and convenient forum.[1] That principle is stated in Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla. 1st D.C.A., 1969,[2] at page 800 where the District Court of Appeal, First District, said as follows:

> "From the foregoing decisions the principle emerges as the recognized law of this state that if a transitory action is filed in a court of Florida between nonresident parties seeking to litigate a cause of action accruing in a foreign jurisdiction, the trial court is accorded a sound discretion in determining whether it should retain jurisdiction of the action or dismiss it without prejudice to the right of the plaintiff to reinstitute the action in a more appropriate and convenient

[1]The trial court never made a determination on "convenience factors" whether the motion to dismiss under the doctrine of forum non conveniens should be granted, although it stated that "there are several sound reasons for the application of the doctrine" in this case. The only holding was that it was divested of any discretionary powers to apply the doctrine because of the decisions in Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797, (Fla., 1st D.C.A., 1969), and Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla., 1st D.C.A., 1970).

[2]The District Court of Appeal, First District, in its order dismissing the interlocutory appeal, relies upon the case of Adams v. Seaboard Coast Line Railroad Co. 224 So.2d 797 (Fla., 1st D.C.A., 1969). The other cases cited by the District Court of Appeal in its opinion were subsequently decided on the same basis as the Adams decision.

> forum. . . . In the ultimate, however, it is seen that the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the action are nonresidents, and the cause of action sued upon arose in a jurisdiction outside of Florida." [emphasis supplied]

The District Court held, however, that under the facts as presented in the Adams case, supra, SCL, even though a Virginia corporation, is nonetheless a resident of Florida for all practical purposes. The Court said at page 801 as follows:

> "For all intents and practical purposes insofar as proper venue of this action is concerned, defendant occupies the same position as does a Florida citizen or a Florida corporation. It would appear to us that the mere fact that it received its corporate charter from some other state would not alter its position as an operating entity having its official headquarters and principal place of business in Florida."

The District Court's holding in the instant case, based upon the precedent in the Adams case, supra, in which it finds that SCL is a resident of Florida, is a conclusion that is contrary to and is in direct conflict on the same point of law with this Court's decision in Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (Fla., 1927).[3]

[3]Petitioner submits that "for all practical purposes" on the record before this Court in this case, the residence of SCL is in Virginia, since the corporate headquarters and principal corporate officers reside in Virginia. Even more importantly, however, the legal residence of the petitioner is in Virginia.

(a) Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (Fla., 1927), is the landmark case in Florida dealing with the question of the residence of a corporation. That case is in direct conflict with the decisions relied upon by the District Court of Appeal and is the primary authority upon which this petition is predicated, but in not one of the cases cited by the District Court of Appeal in dismissing the appeal, is the case of Fowler v. Chillingworth, supra, dealt with or even mentioned. In Fowler v. Chillingworth, supra, this Court flatly held that the mere fact that a corporation received its corporate charter from some other state fixes the exclusive residence of that corporation within the state which created it,[4] which clearly shows that the residence of the Seaboard Coast Line Railroad Company is solely in the State of Virginia and that said company, the petitioner herein, is entitled to apply to the trial court to exercise its discretion in the application of the doctrine of forum non conveniens.

(b) Likewise, in Gay v. Bessemer Properties, 159 Fla. 737, 32 So.2d 591 (Fla., 1947), this Court held that a corporation can have no other legal domicile than the state in which it was originally incorporated and has at all times existed as a corporate entity.

---

[4]Cf. Adams v. Seaboard Coast Line Railroad Co., supra at page 801, where the District Court said "it would appear to us that the mere fact that (SCL) received its corporate charter from some other state would not alter" the fact that for all practical purposes SCL is a Florida resident. That erroneous conclusion is based upon a factual finding (which in itself is incorrect) that SCL's principal place of business is in Florida. "Principal place of business" is the language used exclusively in establishing jurisdiction in the federal court, based upon diversity of citizenship, codified in Title 28, Section 1332(c), U.S. Code Annotated, and has no relevance in any other context.

(c) Furthermore, in the case of Southern Railway Co. v. McCubbins, 196 So.2d 512 (Fla., 3rd D.C.A., 1967), the District Court of Appeal, Third District, applied the doctrine of forum non conveniens on behalf of the Southern Railway Company, (which is also Virginia corporation). For the Seapoard Coast Line Railroad Company to be in a position where the trial courts in this state are divested of all discretionary powers to apply the doctrine of forum non conveniens to it, denies and deprives SCL of the equal protection of the laws as guaranteed to it by Sections 2, 9 and 21 of the Declaration of Rights to the 1968 Revision of the Constitution of the State of Florida and by the Fourteenth Amendment to the Constitution of the United States.

7. The decision of the District Court of Appeal, First District, which petitioner seeks to have reviewed is in direct conflict with the above-mentioned decisions of this Court and of the District Court of Appeal, Third District. Because of the reasons and authorities set forth in petitioner's brief, it is believed that the decision hereby sought to be reviewed is erroneous and that the conflicting decisions of this Court and of the District Court of Appeal, Third District, are correct and should be approved by this Court as the controlling law for the State of Florida.

WHEREFORE, petitioner requests this Court to grant a writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed, approving the decisions of this Court and of the District

Court of Appeal, Third District, as the correct decisions, and granting such other and further relief as shall seem right and proper to the Court.

WAHL and GABEL

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
405 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Petitioner

JAMES E. WILLIAMS
500 Water Street
Jacksonville, Florida 32202
Of Counsel

EXHIBIT "E"

SUPREME COURT OF FLORIDA
JANUARY TERM. A. D. 1975
WEDNESDAY, JUNE 18, 1975

CASE NO. 45,597
DISTRICT COURT OF APPEAL,
FIRST DISTRICT
W-451

[Filed June 20, 1975]

SEABOARD COAST LINE RAILROAD CO.,
Petitioner,

vs.

JONATHAN DIXON,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, BOYD, OVERTON, and ENGLAND, JJ., concur

A True Copy

W

CC: Hon. Raymond E. Rhodes, Clerk
Hon. S. Morgan Slaughter, Clerk
Hon. John M. McNatt, Judge

George D. Gabel, Jr., Esquire
James E. Williams, Esquire
R. J. Beckham, Esquire

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Judy Whittle

Deputy Clerk

EXHIBIT "F"

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1975
THURSDAY, SEPTEMBER 25, 1975

I, SID J. WHITE, Clerk of the Supreme Court of Florida do hereby certify that a Petition for Writ of Certiorari in the case of Seaboard Coast Line Railroad vs. Jonathan W. Dixon, Case No. 45,597, was filed in the Supreme Court of Florida on December 12, 1974 and said Petition for Writ of Certiorari was denied on June 18, 1975 by this Court.

IN WITNESS WHEREOF I have hereunto set my hand and official Seal of the Supreme Court of Florida, at Tallahassee, the Capital, this the 25th day of September, 1975.

/s/ Sid J. White

Clerk of the Supreme
Court of Florida

LIBRARY
SUPREME COURT, U. S.

FILED
OCT 21 1975
MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Petitioner,

-vs-

JONATHAN W. DIXON,

Respondent.

PETITIONER'S REPLY BRIEF

GEORGE D. GABEL, JR.
Wahl and Gabel
405 Florida Title Building
Jacksonville, Florida 32202

Counsel for Petitioner

JAMES E. WILLIAMS
500 Water Street
Jacksonville, Florida 32202

Of Counsel

October, 1975

INDEX

Page

A. The petition for writ of certiorari was properly directed to the District Court of Appeal 1

B. The decision of the state court involved a federal question 4

C. Florida violates the "equal protection of the law clause" in its application of the forum non conveniens doctrine 5

1. SCL as a Nonresident 5

2. SCL as a Resident 6

CONCLUSION 9

CERTIFICATE OF SERVICE 11

TABLE OF AUTHORITIES

Cases

Page

Adams v. Seaboard Coast Line Railroad Co., (Fla. 1st D.C.A., 1969) 224 So.2d 797 ..... 3, 4, 5

Chambers v. Baltimore & Ohio Railroad Company, 207 U.S. 142 (1907) 7

Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667, (Fla., 1927) 3

General Capital Corporation v. Tel Service Co., 212 So.2d 369 (Fla., 2d D.C.A., 1968) 3

Little v. Smith, 124 Kan. 237, 257 P. 959, 57 A.L.R. 100 (1927) 8

Lockerty v. Phillips, 319 U.S. 182 (1943) 8

Missouri v. Mayfield, 340 U.S. 1 (1950) 6, 7

Nash v. Florida Industrial Commission, 389 U.S. 235 (1968) 4

Seaboard Coast Line Railroad Co. v. Ford and Britt, 238 So.2d 473 (Fla., 1st D.C.A., 1970) 3

Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla., 1st D.C.A., 1971), cert. den. 246 So.2d 112 (Fla., 1971) 3

TABLE OF AUTHORITIES (Cont'd)

Page

Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 Fla., 1st D.C.A., 1970), cert. den. 237 So.2d 540 (Fla., 1970) 4

Southern Railway Company v. Bowling, 129 So.2d 433 (Fla., 3d D.C.A., 1961) 2

Southern Railway Company v. McCubbins, 196 So.2d 512 (Fla., 3d D.C.A., 1967) 2, 5

Statutes and Constitutions

Florida Appellate Rule 4.2 2

United States Constitution, Article III 8

28 U.S.C. §1332(c) 8

Other Authorities

2 Fla. Jur. *Appeals* §448 ..... 2, 3

16 Am. Jur. 2d *Constitutional Law* §516 8

In The
Supreme Court of the United States

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Petitioner,

-vs-

JONATHAN W. DIXON,

Respondent.

PETITIONER'S REPLY BRIEF

The Response avoids the thrust of the Petition for Writ of Certiorari, which raises an important constitutional issue. Respondent has placed his reliance primarily upon the argument that Petitioner should have directed the writ to the trial court rather than the District Court of Appeal. Petitioner suggests that Respondent's omission of any significant argument against the points raised is a tacit admission of the correctness of Petitioner's position; and a tacit admission that if the writ is properly directed to the District Court of Appeal it most likely should be granted.

A. *The Petition for writ of certiorari was properly directed to the District Court of Appeal.*

The trial court denied petitioner's motion to dismiss under

the doctrine of forum non conveniens. Ordinarily, an interlocutory order such as the one in question would not be appealable since it is not a "final order disposing of the case." The Florida Appellate Rules, however, provide for appeals from interlocutory orders in certain specified instances. See 2 Fla.Jur. *Appeals* §448. One of those specified instances is an appeal from an order "relating to venue." Florida Appellate Rule 4.2 provides in pertinent part as follows:

> "Appeals may be prosecuted in accordance with this rule from . . . interlocutory orders relating to venue or jurisdiction over the person. . . . This rule shall not be construed as limiting or affecting the power of the district courts of appeal or the circuit courts in reviewing any appropriate interlocutory order by common law certiorari."

It is well settled that an order denying a motion for dismissal on the doctrine of forum non conveniens is an interlocutory order "relating to venue" appealable under Rule 4.2, Florida Appellate Rules. See *Southern Railway Company v. McCubbins*, 196 So.2d 512 (Fla., 3d D.C.A., 1967), and *Southern Railway Company v. Bowling*, 129 So.2d 433 (Fla., 3d D.C.A., 1961).

The petition for writ of certiorari filed in the Supreme Court of Florida was denied. As it was entitled to do, that court refused to take jurisdiction of the case. The District Court of Appeal, however, did not refuse to take jurisdiction of the case, nor did it have the opportunity to do so. Review was sought in the District Court of Appeal, not by common law certiorari, but by *appeal*.

On appeal the appellate court acquires jurisdiction of the cause when the notice of appeal is filed. It is not a discre-

tionary acquisition of jurisdiction. Respondent argues that the dismissal of the appeal by the District Court of Appeal indicates a refusal of the appellate court to take jurisdiction of the case. (Respondent's Brief, p. 5). That is not the law in Florida, however. As stated in *General Capital Corporation v. Tel Service Co.*, 212 So.2d 369 (Fla., 2d D.C.A., 1968), at page 382:

> "When a notice of appeal has been timely filed, *jurisdiction* of the cause then *vests absolutely in the appellate Court* until such appeal has been finally disposed of by affirmance, reversal, or *dismissal;* subject only, of course, to a mere temporary relinquishment of jurisdiction for some specified, exceptional purpose, . . . " [Emphasis supplied.]

Since the District Court of Appeal acquired jurisdiction of the cause when the notice of appeal was timely filed and disposed of the appeal by dismissal, the writ of certiorari runs to the District Court of Appeal. In its opinion in dismissing the appeal [A-26, 37; 303 So.2d 39], the District Court of Appeal cited the cases previously decided against Petitioner on the same point of law, *Adams v. Seaboard Coast Line Railroad Co.*, 224 So.2d 797 (Fla., 1st D.C.A., 1969); *Shaw v. Seaboard Coast Line Railroad Co.*, 229 So.2d 275 (Fla. 1st D.C.A., 1970), cert. den. 237 So.2d 540 (Fla. 1970); *Seaboard Coast Line Railroad Co. v. Ford and Britt*, 238 So.2d 473 (Fla. 1st D.C.A., 1970); and *Seaboard Coast Line Railroad Co. v. West*, 242 So.2d 156 (Fla. 1st D.C.A., 1971), cert. den. 246 So.2d 112 (Fla., 1971).

The court also indicated it had considered the case of *Fowler v. Chillingworth*, 94 Fla. 1, 113 So. 667 (Fla., 1927). Having considered the merits of the case (which included

reliance on its prior unconstitutional decisions), the District Court of Appeal dismissed the appeal.

The case of *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1968), cited by Respondent, is inapplicable since it dealt with a discretionary writ of certiorari, not an appeal.

B. *The decision of the state court involved a federal question.*

In Petitioner's motion in the trial court to dismiss under the doctrine of forum non conveniens, Petitioner specifically stated:

> "The Defendant herein respectfully submits that to deny its Motion to Dismiss upon the doctrine of forum non conveniens, the Defendant will be deprived of equal protection of the laws, as guaranteed to it by . . . the Fourteenth Amendment to the Constitution of the United States." [A-12].

The motion was denied, and the trial court stated that "although there are several sound reasons for the application of the doctrine" in this case, the decisions in *Adams v. Seaboard Coast Line Railroad Company*, 224 So.2d 797 (Fla., 1st D.C.A., 1969), and *Shaw v. Seaboard Coast Line Railroad Co.*, 229 So.2d 275 (Fla., 1st D.C.A., 1970, "interdict a judge of this Court from exercising any discretion in the matter." [A-29].

On appeal in the District Court of Appeal, Petitioner raised as one of its assignments of error the following:

> "The denial . . . of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens deprives this Defendant of its constitutional right to equal protection of the laws, as guaranteed by . . . the Four-

teenth Amendment to the Constitution of the United States of America; and said Court is thus in error." [A-34].

The appeal was dismissed in what amounted to a "speedy affirmance." The Petitioner has tried numerous times to have this highly inequitable situation remedied, and has been rebuffed by the courts of Florida on each occasion. In that setting, and in an effort to have the matter presented to this Court for some relief, Petitioner expected the District Court of Appeal to make short work of its appeal. It would be only wishful thinking to expect that court to reverse itself, even though it has been incorrect in its previous holdings. But there is some hope that the highest court in the land may instruct the Florida court in its duties under the United States Constitution.

C. *Florida violates the "equal protection of the law clause" in its application of the forum non conveniens doctrine.*

1. SCL as a Nonresident.

Florida applies the doctrine of forum non conveniens only to *nonresidents*. Seaboard Coast Line Railroad Company (SCL), even though a Virginia corporation, was found in the facts before the District Court of Appeal in *Adams v. Seaboard Coast Line Railroad Co.*, supra, to be a resident of Florida *for all practical purposes*. As such it was not allowed in *Adams*, supra, or in the present case, to apply to the trial court's discretion in order to seek the benefits of the doctrine of forum non conveniens.

The record is clear, however, that the Southern Railway Company is similarly situated as SCL. That railroad company in *Southern Railway Company v. McCubbins*, supra,

was allowed to raise and utilize the doctrine of forum non conveniens. It is significant that not one word of Respondent's Response deals with Petitioner's contention that the two railroads are similarly situated or in like circumstances. Obviously, the argument is a telling one.

2. SCL as a Resident.

Petitioner has argued in its Petition (page 24 *et seq.*) that even if SCL is considered to be a resident of Florida, the distinction made between residents and nonresidents denies to SCL as a resident the equal protection of the laws. Florida is depriving a resident of the right to defend in the courts of Florida upon terms of equality with nonresidents doing business in the state.

Respondent attempts to deal with this argument by paraphrasing the language of Mr. Justice Frankfurter in *Missouri v. Mayfield*, 340 U.S. 1 (1950), stating that the test of constitutionality in the application of the doctrine of forum non conveniens in *Missouri v. Mayfield*, is as follows at 340 U.S. p. 4:

> " 'Residents' and 'nonresidents' may be treated differently under the Constitution, so long as a state does not favor its own citizens."
> (Respondent's Brief, p. 11).

Presumably, Respondent is not representing that to be a direct quote, because that language is not in the case. Mr. Justice Frankfurter actually said as follows at 340 U.S. p. 4:

> "But if a State chooses to '[prefer] residents in access to often overcrowded Courts' and to deny such access to all nonresidents, . . . it is a choice within its own control. . . .

> "But neither of these cases limited the power of a State to deny access to its courts to persons seeking recovery under the Federal Employers' Liability Act *if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially*, . . . "

In the present case, we are not dealing with *access* to the courts, where a resident may be preferred over a nonresident. We are dealing with a local policy that denies a resident the right to raise the doctrine of forum non conveniens in the courts of Florida, even though there is no connection with the forum, including the residence of the plaintiff, but allows a nonresident defendant the benefit of the doctrine. In the case of a nonresident defendant the nonresident plaintiff is required to file his suit where it should have been brought in the first place. Contrary to the position suggested by Respondent's extensive paraphrasing of the language in *Missouri v. Mayfield*, supra, this Court has clearly said in dealing with the question of equal treatment in *Chambers v. Baltimore & Ohio Railroad Company*, 207 U.S. 142 (1907), as follows at pages 148 and 149:

> "The right to sue *and defend* in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Federal Constitution. . . .

> "But, subject to the restrictions of the Federal Constitution, the State may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them. The state policy decides whether and to what extent the State will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions. Different States may have different policies at different times. *But any policy the State may choose to adopt must operate in the same way on its own citizens and those of other States.*" [Emphasis supplied.]

It is obvious (and Respondent so admits at page 9 of its Brief) that the policy that the State of Florida has chosen to adopt operates in a different way on its own citizens (denying them the right to use the doctrine of forum non conveniens) and those of other states (whose citizens are allowed to utilize the doctrine). Respondent glibly suggests that SCL is treated just as any other resident. But SCL is not treated in the same way as residents of other states, and therein lies the rub. See 16 Am. Jur. 2d *Constitutional Law* §516, and *Little v. Smith*, 124 Kan. 237, 257 P. 959, 57 A.L.R. 100 (1927).

Respondent argues that 28 U.S.C. §1332(c) disposes of the question. That section, however, deals only with the creation of the lower federal courts and determination of their *jurisdiction*, a matter left entirely to the Congress by Article III of the U. S. Constitution. In that connection this Court said in *Lockerty v. Phillips*, 319 U.S. 182 (1943), at page 187:

> "All federal courts, other than the Supreme Court, derive their jurisdiction wholly from *the exercise* of the authority to 'ordain and establish' inferior courts, conferred on Congress by Article III, §1 of the Constitu-

> tion. Article III left Congress free to establish inferior federal courts or not as it thought appropriate. It could have declined to create any such courts, leaving suitors to the remedies afforded by state courts, with such appellate review by this Court as Congress might prescribe. . . . The Congressional power to ordain and establish inferior courts includes the power 'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degree and character which to Congress may seem proper for the public good.' . . . "

In any event, the judicial power of the United States extends *in diversity cases* only to controversies between citizens of different states, and for purposes of jurisdiction "principal place of business" defines that citizenship where corporations are concerned. Florida's courts are not so limited, and citizens of any state can bring suit and defend in Florida. Florida can establish its own policy so long as the litigants, whether residents or nonresidents, are treated the same.

CONCLUSION

The Petition for Writ of Certiorari was directed to the District Court of Appeal, the highest court in which decision could be had, since the discretionary review of the Florida Supreme Court was not invoked, although it was sought.

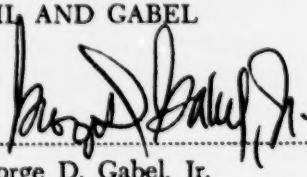
The Petition should be granted. SCL is being denied the equal protection of the laws, whether it is considered as a resident or a nonresident of the State of Florida. The unfairness involved in this case is compounded by the fact that the active tortfeasor/potential third party defendant lives in Georgia, beyond the jurisdiction of the courts of the State of

Florida. Unless this Court grants Petitioner at least the chance for some relief, there will be a trial in Florida of a Georgia case and then a perfectly useless additional trial in Georgia against the industry which caused the alleged unsafe place to work.

Respondent obviously concedes the merit of Petitioner's position, having declined to make a significant response to the equal protection argument. Petitioner prays that the decision of the District Court of Appeal of Florida, First District, be reversed and the case remanded with directions to the trial court to exercise its discretion in the application of the doctrine of forum non conveniens.

Respectfully submitted,

WAHL AND GABEL

By 

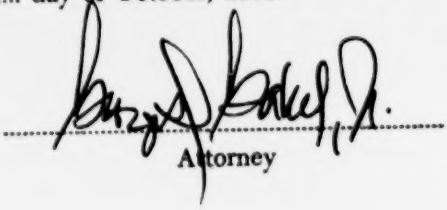
George D. Gabel, Jr.
405 Florida Title Building
Jacksonville, Florida 32202
Attorney for Petitioner

Of counsel:

James E. Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief was furnished to BECKHAM & McALILEY, 1010 Concord Building, 66 West Flagler Street, Miami, Florida 33130, by U.S. mail, this 20th day of October, 1975.



Attorney